

Syllabus

IN THE MATTER OF

STERNHEIMER BROS., INC., TRADING AS ARMY & NAVY
SUPPLY COMPANY AND ARMY GOODS STORE

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

Docket 2756. Complaint, Apr. 3, 1936—Decision, Dec. 31, 1936

Where a corporation engaged in the operation of a number of retail stores in the District of Columbia and in the State of Virginia, and maintaining also a mail order business through which it solicited and accepted orders for merchandise out of its stock from persons in the various States other than that aforementioned, and successor to a concern long theretofore engaged chiefly in the purchase of goods from the Army and Navy Departments of the United States Government and in the offer thereof for resale, and in competition, as such successor to aforesaid business, with those engaged in the marketing of goods similar to its own and who do not use words "Army" or "Navy," or either of them, in connection with their corporate or trade names or their advertisements or representations as to source or origin of merchandise sold by them—

Made use of words "Army" and "Navy" in its corporate and various trade names under which it operated its various stores and branches of its said business, and including such names as "Army Goods Store," "Army Store," "Navy Store," and "The Army and Navy Supply Company," and featured its aforesaid various names in large signs affixed to its mercantile establishments, and in trade journals, catalogs, circulars, and advertisements in daily newspapers and other periodicals, with words "Army" or "Navy" of equal prominence with other portions of the name, notwithstanding fact that a substantial portion of its inventory had been drawn from the common marts of trade, and the theretofore sales by the Army and Navy Departments of large quantities of surplus and condemned material had been so sharply curtailed that, for a number of years last past, almost no goods had been sold;

With result that various members of the purchasing public formed the conclusion or received the impression and belief from use of aforesaid words, that goods to be purchased in store in question were substantially all, if not all, procured from aforesaid departments of the Government, and were of the quality and nature used by them, and that a substantial bargain, with reference to price and quality, would be obtained in such store, and with the result that a substantial number of such members of said public were induced, by virtue of such belief or impression, to make purchases of and from it, and with capacity and tendency to, and effect of, misleading and deceiving members of purchasing public into such false impression and belief and of causing an unfair diversion of trade from competitors who offer merchandise identical with the bulk of its inventory and procured, like its own, from same source and ordinary marts of trade, without making use of such misleading and deceptive practice; to the substantial injury of competition in commerce:

Complaint

24 F. T. C.

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Nelson & Nelson, of Richmond, Va., 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 Sternheimer Bros., Inc., trading as Army and Navy Supply Co. and Army Goods Store, hereinafter referred to as respondent, has been and now 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 complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Sternheimer Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia and having its principal office and place of business in the city of Richmond and State of Virginia. The respondent maintains a mercantile establishment owned and controlled by it located in the city of Washington within the District of Columbia.

The respondent has, during its entire corporate existence and for more than three years last past, maintained within the city of Richmond, State of Virginia and the city of Washington, District of Columbia a general mercantile business and has sold and caused to be sold and still causes merchandise in which it deals to be sold and transported from its place of business in the city of Richmond into and through the District of Columbia and the various States of the United States other than the State of Virginia, to purchasers of the same; has sold and caused and still causes merchandise in which it deals to be transported from its place of business in the District of Columbia into and through the various States of the United States; and has sold and caused and still causes merchandise in which it deals to be sold and transported from its place of business in the city of Washington, District of Columbia throughout the said District of Columbia, in commerce, within the intent and meaning of "commerce" appearing in the act hereinabove set forth.

In the course and conduct of its business, respondent is in competition with other individuals, copartnerships and corporations engaged in the sale and distribution of like merchandise throughout the

various States of the United States and throughout the District of Columbia.

PAR. 2. In the course and conduct of the business of the respondent, it has operated continuously in the city of Richmond and State of Virginia under the trade name "Army and Navy Supply Co." and in the city of Washington under the trade name "Army Goods Store." By the implied representation of the trade names related, purchasers are led to believe that the stock of merchandise held out to the purchasing public by the respondent was made for, or purchased from the Army or Navy Departments of the United States Government but virtually none of the merchandise is purchased at any Army or Navy surplus or refuse goods sales. The small amount of such Army or Navy goods carried by the respondent, if any, is bought from jobbers, wholesalers and others who buy at such Army or Navy reject or refuse goods sales. The remainder of the respondent's stock of merchandise consists of the usual stock found generally in ordinary mercantile establishments and is procured from the common marts of trade. It is purchased from those sources from which the general merchant buys his stock of goods and is not purchased from the Army or Navy or from those who purchase merchandise at any Army or Navy surplus or refuse sales. The respondent is in no way connected with the Army or Navy and has no affiliation, association, or working agreement with such Departments.

PAR. 3. There are among the members of the purchasing public, a substantial number thereof who have a preference for the purchase of goods, wares, and merchandise actually procured from the United States Army or Navy Departments in the belief that they thereby secure goods of superior quality to those of like price and design to be procured from other sources.

There are among the competitors of said respondent, as referred to in paragraph 1 above, individuals, copartnerships, firms, and corporations engaged in the sale and distribution of like and similar merchandise within the areas wherein the respondent trades, who do not falsely misrepresent the source of origin of their merchandise by the use of a false and misleading corporate or trade name.

The above acts and practices of the respondent have and had the capacity and tendency to mislead and deceive and have misled and deceived a substantial number of the members of the purchasing public into the false belief that in purchasing from the respondent they were purchasing goods secured from the Army or Navy Departments of the United States Government and were actually securing a superior quality of goods for the price paid therefor. Such acts and practices of the respondent have diverted trade to the respondent from its com-

Findings

24 F. T. C.

petitors engaged in the sale of merchandise of a similar quality and kind with that sold and offered for sale by the respondent in interstate commerce, as aforesaid, and which said competitors refrain from falsely representing that the goods so sold and offered for sale by them are derived from the Army or Navy Departments of the United States Government and who do not use a false or misleading corporate or trade name in such business.

PAR. 4. The alleged 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 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 April 3, 1936, issued, and on April 6, 1936, served, its complaint in this proceeding upon respondent, Sternheimer Bros., Inc., trading as Army and Navy Supply Company and Army Goods Store, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and said substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now 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 was organized in 1868 as the "L. Rose Company" as a copartnership and was engaged chiefly in the business of purchasing goods from the Army and Navy Departments of the

United States Government and offering them for resale. Sternheimer Bros., Inc., is a Virginia corporation, successor to said company and such corporation maintains 16 retail stores scattered throughout the State of Virginia, variously operated under the trade names "Army Goods Store," "Army Store," "Navy Store." At the time of the issuance of the complaint, respondent operated two stores in the District of Columbia under the name "Army Goods Store."

PAR. 2. The respondent likewise maintains a mail-order business under the trade name "The Army and Navy Supply Company," which solicits and accepts orders for merchandise out of the stock of the respondent corporation from various firms, persons, partnerships located in the various States of the United States other than the State of Virginia. It transports or causes the commodities so ordered to be transported into and through the various States of the United States and the District of Columbia to such purchasers.

The respondent has maintained and now maintains a constant current of trade and commerce among and between the various States of the United States and the District of Columbia in said goods, wares, and merchandise.

PAR. 3. There are among the competitors of respondent in commerce, among and between the various States of the United States, persons, partnerships, firms, and individuals engaged in the marketing of like merchandise but who do not use the words "Army" or "Navy" or either of them in connection with their corporate or trade name or in connection with their advertisements or representations as to the source of origin of the merchandise which they sell.

PAR. 4. From approximately 1920 until the year 1927, the Army and Navy Department of the United States Government sold large quantities of surplus and condemned material. Subsequent to 1927, these sales have been so sharply curtailed that since the year 1932 almost no goods have been sold.

PAR. 5. Of the inventory of the respondent, a substantial portion thereof has been drawn from the common marts of trade.

PAR. 6. The respondent corporation causes its various trade names to be displayed in large signs affixed to its mercantile establishments, in trade journals, catalogues, circulars, advertisements appearing in daily newspapers and other periodicals with the words "Army" and "Navy" or either of them featured as prominently as other portions of its name.

PAR. 7. Various members of the purchasing public, upon observing the use of the words "Army" and "Navy" in connection with the corporate name of the respondent and in its circulars and advertise-

Order

24 F. T. C.

ments, as hereinabove stated, have formed the conclusion or received the impression and belief, from the use of such words, that the goods to be purchased in said store were substantially all, if not all, procured from the Army and Navy Departments of the United States Government; that the goods were of the quality and nature used by said Departments; that a substantial bargain with reference to price and quality would be obtained in such store; and a substantial number of such members of the purchasing public have been induced, by virtue of such belief or impression, to make purchases of and from the respondent.

PAR. 8. The use by the respondent of the words "Army" and "Navy" in connection with its corporate name and its various trade names in its advertisements and circulars, as above described, had and has the tendency and capacity to, and did and does, in fact, mislead and deceive members of the purchasing public into the false impression and belief as set forth in paragraph 7 hereof.

PAR. 9. The use of the words "Army" and "Navy" in connection with the corporate and trade names, circulars and advertisements of the respondent, has caused and causes an unfair diversion of trade from competitors of the respondent who offer to sell merchandise identical with the bulk of the inventory of the respondent and procured from the same source, i. e., the ordinary marts of trade, but who do not make use of such misleading and deceptive practices, and has caused and now causes substantial injury to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Sternheimer Bros., Inc., trading as Army and Navy Supply Company and Army Goods Store, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on December 30, 1936, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Com-

mission 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, Sternheimer Brothers, Inc., a corporation, also trading as Army & Navy Supply Company and Army Goods Store, or under any other trade name, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of goods, wares and merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using in connection with its corporate name or trade names the words "Army" and "Navy" or either of them.

2. Advertising or causing to be advertised in any circulars, catalogues, trade journals, daily newspapers or other periodicals the words "Army" and "Navy" or either of them, descriptive of or in connection with any merchandise sold or offered to be sold to the public unless the said merchandise has been actually procured from the Army or Navy Departments of the United States Government.

Provided, however, That for a period of three years the words "Formerly Army Goods Store," "Formerly Navy Goods Store," and "Formerly The Army & Navy Supply Company" may be used, and

Provided, however, That the terms of Section 2 hereof shall not apply to such contracts for advertising as may have been entered into prior to the issuance and service of this order.

It is further ordered, That respondent shall, within 90 days after the service upon it of a copy of this order, file with the Commission an interim report in writing setting forth in detail the manner and form in which this order has been complied with.

And it is further ordered, That respondent shall, within 36 months after the service upon it of a copy of this order, file with the Commission a final report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

IN THE MATTER OF
RETAIL FURNITURE DEALERS' ASSOCIATION OF
ST. LOUIS, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2757. Complaint, Apr. 9, 1936—Decision, Dec. 31, 1936

Where the retail furniture dealers' association of St. Louis, members of which were engaged in the purchase of furniture and allied products including, usually, electric refrigerators and radios, from various manufacturers, distributors, wholesalers, jobbers, and dealers in many different States, and in reselling such furniture and merchandise at retail to various members of the consuming public in Missouri and Illinois and in other States of the trade area adjacent thereto, and some of the members of which were, during the time herein concerned, engaged in commerce between and among the different States and in trade, business, and commerce which had a direct and substantial effect upon interstate commerce in furniture and allied products, including electric refrigerators and radios, and some of the members of which, thus engaged, were in substantial competition with others similarly engaged in the purchase and sale at retail and distribution of such products; and the officers and executive board members of said association; in pursuance of objects for which created and to enhance and promote the volume of trade, business, and profits of its members, and incident to certain policies, sales methods, and trade practices which they sought to have and, which, to some extent, were put into effect by manufacturers, distributors, wholesalers, and jobbers engaged in interstate commerce and trading in area in question—

- (a) Requested such wholesalers, jobbers, and manufacturers, selling furniture and allied products in area in question, to adopt, follow and adhere to policy and practice that no sales of such products be made by them directly to ultimate consumer or to their own employees, except for latter's personal use, or to contractors, institutions, hotels, apartment-house operators, real-estate dealers, or large industrial plants, and that requests from ultimate consumers to buy merchandise from them, to be billed through some retail dealer, be refused, and such customer be required to purchase from a "regular" retailer, and that no sales or deliveries be made by them to homes of ultimate consumers and no merchandise be sold to salesmen for any furniture retailer unless sold, billed, and delivered to such dealer;
- (b) Requested such wholesalers, etc., to adopt, follow and adhere to policy and practice that no orders for merchandise be accepted by them from dealers in cities other than St. Louis, Mo., or East St. Louis, Ill., where delivery thereof was to be made in said two last-named cities, and that no merchandise at any time be donated by them or placed on consignment basis with anyone, except for short period for window or floor display only;
- (c) Requested such wholesalers, etc., to adopt, follow, and adhere to policy and practice that they do not sell merchandise to concerns who sell at retail and who, in so doing, hold themselves out to public and to their customers as contract home furnishers operating on basis similar to that of whole-