

Syllabus

IN THE MATTER OF

CARLO VAN MYERS, DOING BUSINESS AS NORTH AMERICAN CLOTHES COMPANY, NATIONAL BRAND CLOTHES COMPANY, SARTORIAL ART CLOTHES COMPANY AND SOCIETY BOND CLOTHES COMPANY

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

Docket 2624. Complaint, Nov. 12, 1935—Decision, Jan. 30, 1937

Where an individual, with one or two employees, limited to a young woman assistant and occasionally a stenographer, and with office or desk space at the addresses shown by him, engaged in sale of ready-made suits, trousers, overcoats, and topcoats direct to the consumer, through salesmen whom he (1) contacted through advertisements in newspapers and periodicals describing his said product as of high quality, with numerous patterns, union-made, and reasonably priced, and (2) supplied, upon receipt of application forms, and without any adequate showing as to their fitness, honesty, or reliability, with "Authorization Certificates," order forms with instructions for and depictions of a tailor taking various measurements, and sample books displaying on each page words "Fine Clothing Reasonably Priced," and whose practice it was, in the case of many, to apply stickers to his said samples, as well as to those procured for their own use, and different from and much superior to those furnished by him, denoting such materials as "Virgin Wool" and the like, and by and of whose various misrepresentations, over the course of years, and encouraged, aided, and abetted by him in the case of many, he knowingly and deliberately benefited and took advantage, without reasonable or adequate measures to rid himself of such dishonest representatives or prevent his customers from being victimized by them, so as to constitute, in effect, a system of business and method of competition—

- (a) Represented that said clothing was all wool or of fine quality, and that it would be of the same material as the samples exhibited to purchasers and prospective purchasers, and that he would fill orders with materials corresponding exactly in quality and color with samples exhibited in swatch books or sample books, facts being clothing with which he filled orders was not all wool, but either cotton or mostly cotton, and was of very poor quality material, and was not, generally speaking, of the same material or equal to samples with which he supplied his salesmen, nor of the same material or equal to those shown by latter in cases where they used samples not furnished by him, but clothing sent out by him, in a great proportion of the orders taken by his said salesmen, was of different material, pattern, or color or of material inferior in quality to that selected, or differed in all or several of such respects from that ordered;
- (b) Represented that said clothing was made to measure or tailor-made, and that there was a choice of styles, and that personal delivery thereof would be made by the salesman or by a tailor who would make necessary alterations, and that fittings would be had before the garment was com-

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pleted, facts being clothing in question was not tailor-made nor altered to size and fit of wearer, but was ready-made clothing of cheap workmanship, and it was his practice to fill orders for suits from manufacturer's stock in one style of garment only, with no choice, and there were no personal deliveries, nor alterations on delivery, and no fittings, and in many cases he sent out clothing, in filling orders, in sizes widely at variance from those ordered, and so wholly unsuited in size, with variances amounting to as much as four or five sizes too small or too large, to customer ordering same, that clothing could not possibly be used, and filled orders, in many cases, by sending clothing not of the ready-made size indicated by customer's measurements, and, except in special instances, by sending in all cases so-called regular sizes, with no alterations, so as to make it conform as nearly as might be to individual's measurements;

- (c) Represented that two garments were included in price of one, and that extra trousers were furnished without extra charge, and that prices quoted were special introductory, and that the clothing was sold on the installment plan, with discounts given for payment in full at time of order, facts being prices quoted were the regular prices for one suit or garment, with no extra clothing included, extra trousers were furnished only at extra cost, all clothing was sent C. O. D. to the purchaser and no installments were allowed nor any discount given for cash payment; and
- (d) Represented that the business in question was a local one or one well-known locally, and that the salesman was located at a given address, and that his name was that given to the customer, facts being he had no connection with any clothing concern outside of New York City, and was not connected in any way with the named concern in Chicago, and names and addresses given by salesmen were frequently fictitious;

With effect of misleading and deceiving members of the public in the aforesaid various particulars, and of inducing them to give orders for his said clothing and to pay money to him and his salesmen therefor, and of defrauding members of the public by inducing them, as aforesaid, to pay out money for articles of clothing of a kind, quality, and description which they did not order or intend to buy, by reason of the erroneous beliefs engendered as above set forth, and of diverting trade to him from competitors engaged in the sale of men's clothing in commerce among the various States and in the District of Columbia, and including therein those who did not make use of the same or similar misleading or fraudulent methods used by him and his salesmen as above described; to their substantial injury and prejudice:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Harry D. Michael for the Commission.

Mr. Irving A. Fishman, 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 Carlo Van Myers, doing business at various times under the names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, has been and 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 thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, Carlo Van Myers, doing business under the names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, trading under one or another of the aforesaid trade names, is now and has been for more than three years last past engaged in the sale and distribution in interstate commerce of men's ready-made clothing, with his office and principal place of business in the city of New York, in the State of New York. Said respondent, in the course and conduct of his said business, causes the clothing sold by him, consisting of men's suits, trousers, overcoats, and topcoats, to be transported in interstate commerce from his said place of business in New York to, into, and through States of the United States other than New York to various and numerous persons in such other States to whom such clothing is or has been sold.

PAR. 2. That during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of men's clothing, consisting of suits, trousers, overcoats, and topcoats, and such other individuals, firms, and corporations have caused and do now cause their said clothing, when sold by them, to be transported from the various States of the United States where they are located, to, into and through States other than the State of origin of the shipment thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said clothing with such other individuals, firms, and corporations.

PAR. 3. That respondent, in the sale of ready-made clothing, as aforesaid, makes use of salesmen who solicit the general purchasing public in making sales of the same. Such salesmen are respondent's representatives or agents. They are contacted and secured by respondent by inserting advertisements under the heading "Salesman Wanted," and others of like character, in newspapers and magazines

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published in various parts of the United States and of general circulation therein, of which the following is an example, to wit:

Clothing Men, Direct, Finest Spring Line, Suits, Topcoats, \$16.85,
Commission \$5.00 North American Clothes, 818 Broadway, New York.

Upon replies to such advertisements being received and application forms being filed by those replying, respondent sends each of them what he designates as an "Authorization Certificate," together with order forms and book of samples. No adequate showing is required of those who apply, nor is any adequate investigation made as to their fitness, honesty, or reliability. Said representatives thereupon go about among the purchasing public and take orders for clothing, which said orders are forwarded by them to respondent to be filled. Many of such representatives have been accustomed to, and did and do, make various false and misleading representations, as a result of which they are enabled to and do secure orders for clothing. Among such false and misleading representations made by said representatives are the following:

- (1) That the clothing offered for sale is all wool, or of fine quality.
- (2) That it will be made-to-measure, or tailor-made.
- (3) That two garments are offered for the price of one.
- (4) That extra trousers will be furnished without extra charge.
- (5) That the clothing ordered will be like the samples selected, whether the ones selected are in respondent's sample book, or others secured by the salesman.
- (6) That prices quoted are special introductory prices.
- (7) That a local store is to be opened soon.
- (8) That choice of style of garment could be had, such as choice between single-breasted and double-breasted.
- (9) That personal delivery of the garment ordered will be made by the salesman or by a tailor representing respondent, who will make necessary alterations.
- (10) That fittings will be had before the garment is completed.
- (11) That respondent is a local concern, or one well known locally, such as the North American Tailoring Company, of Chicago, Ill.
- (12) That installment payments can be made on balance due after the down payment.
- (13) That a discount is allowed for payment in full at time order is given.
- (14) That the salesman is located at a given address and that his name is that given to the customer.

PAR. 4. That in truth and in fact, the clothing sold by respondent is not all wool, but is all cotton, or mostly cotton, with a small mixture of wool, or is cotton French back with wool in the facing, or is otherwise of very poor quality material. The clothing delivered by respondent is ready-made and of cheap workmanship. All of it is bought by the respondent after orders are received. The prices quoted

are the regular prices for one garment. Extra trousers are furnished only at extra cost. The samples shown are not of the same material as in the clothing shipped by respondent. The prices quoted are regular prices. Respondent neither has local stores nor has he taken steps to establish such. His only place of business is office space with another concern in New York City. He manufactures no clothing and keeps no stock on hand. Generally speaking, customers are not given a choice between single- and double-breasted, but orders are filled in one style of garment only. All garments are sent c. o. d. and there is no personal delivery or alterations on delivery, and no fittings. Respondent has no connection with any local concern outside of New York City and is not connected with the North American Tailoring Company, of Chicago, Ill. No installment payments are allowed, nor is there any discount for full cash payment. The names and addresses given by salesmen to customers are often fictitious.

PAR. 5. That such misrepresentations as hereinbefore stated have been accustomed to be made by many of respondent's salesmen for a period of years. Respondent has been notified and informed by customers of such misrepresentations. Nevertheless, respondent has continued to accept and fill orders sent in by his salesmen after having been thus put upon notice that the orders so accepted were probably procured by means of misrepresentations. No reasonable or adequate measures have been or now are taken by respondent to rid himself of dishonest salesmen, or to prevent customers from being victimized by their misrepresentations. Neither does respondent adequately, fully, and generally make restitution for losses incurred by customers as a result of transactions resulting from such misrepresentations. In some cases substitutions of garments inferior to and unlike those ordered are made. In some cases the c. o. d. payment made for the garment is returned. In only a few cases is the down payment made to the salesman refunded and then only after extended efforts made by the customers. In only rare cases is the amount paid by the customer for postage charges refunded. In nearly all cases dilatory tactics are used, so that the customer becomes discouraged and accepts a bad bargain and lets the matter drop. In such manner respondent has continually profited by the misrepresentation of his salesmen and by such method of business as aforesaid.

PAR. 6. That respondent encourages, aids, and abets some of the aforesaid false and misleading representations of his salesmen and contributes to the misleading of the customer by the means and methods as hereinafter set out. In the advertisements for salesmen he falsely represents that his clothing is of high grade and quality

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by such phrases as "Finest Spring Line". In his letters to prospective salesmen, paragraphs such as the following appear:

National Brand Clothes Company, has made up a line of samples for spring and summer suits, including topcoats, which are superb in their designs, A-1 in their quality, and at a price to fit the pocketbook of the average customer.

Our line consists of over forty handsome patterns. A fine line of Union Made suits. Great values.

On each page of the sample book sent out is a statement such as the following, which is seen and read not only by the salesman but by the customer:

Fine Clothing Reasonably Priced.

On the order blank forms furnished to salesmen and used in the taking of orders for clothing are nine pictures of a tailor taking different measurements of a man for clothing. The following directions appear under the respective pictures:

- A. Take this measure over vest at breast snugly but not tight.
- B. Take this measure with coat on from collar seam to length wanted.
- C. Take this measure with coat on from seam at armhole to sleeve length wanted.
- D. Take this measure with coat on, from middle of back to armhole seam.
 - 1. Around waist, over shirt but under vest snug but not tight.
 - 2. Around fullest part of seat.
 - 3. From well up in crotch to length desired.
 - 4. From top of pants to length desired.

In addition, said order form has thereon the following blanks for the furnishing of information relative to the customer's build, size, and general conformation, such as would be required in making clothing to measure, to wit:

Very Important

Age --- Weight ---- Size now wearing ---- Cuffs ---- No cuffs ---

Answer Carefully

Neck measure? -----
 Long, Medium, or Short Neck? -----
 Regular, Sloping, High Shoulders? -----
 Position: Regular, Erect, Stooping? -----
 Vest Opening ----- Vest Length -----
 Width of Knee ----- Width of Bottom -----
 Is customer Regular, Slender or Stout? -----
 Are Suspender Buttons Wanted? -----

Respondent's salesmen use said order form in taking orders from customers. They take the measurements as directed and secure the other information requested. All of this leads the customer to believe that he will get a made-to-measure suit and causes him to accept the salesman's assurance to the same effect.

Moreover, respondent furnishes to his salesmen an attractive sample book containing sample swatches, many of which, to the ordinary observer, have the appearance of being all wool, or cloth of very good quality with a considerable portion of wool. Such samples aid the dishonest salesman in carrying on the deception as hereinbefore alleged and tend to mislead the purchasing public, in the absence of any statement by respondent on the sample book as to the materials entering into the makeup of the samples. Some salesmen apply stickers to the samples, denoting them as "virgin wool" and the like.

PAR. 7. That many of respondent's salesmen have been accustomed to use high grade all wool samples in taking orders, totally different from and much superior to the line of goods handled by respondent. Respondent has been informed of this practice by customers and has been well aware of the same at all times. In spite of such knowledge, respondent continues to send out suits of inferior materials to fill orders so taken and to insist on substitution after complaint is made, rather than make full restitution and put the customer in status quo.

PAR. 8. That respondent fills orders for clothing sold by his salesmen in a large number of cases by sending clothing of different material, pattern or color from that ordered, or of material inferior in quality to the samples selected, or differing in several or all of such particulars. In a great number of cases clothing has been sent to purchasers in sizes widely at variance from the sizes ordered and wholly unsuited to the customer. Such variances are as much, in some cases, as four or five sizes too small or too large, and the clothing either so small that the customer cannot get it on, or so large that it is wholly unfit to wear. In many cases orders are filled by sending clothing not of the ready-made size that would be indicated by the customer's measurements. Except in special instances, all orders received by respondent are filled by sending so-called "regular" sizes, and no alterations are made therein to conform as near as may be to measurements submitted.

PAR. 9. That the representations of respondent and his salesmen, as aforesaid, have had and do have the tendency and capacity to mislead, confuse and deceive members of the public in the particulars as aforesaid. That the practices and methods used as hereinbefore set out result in defrauding customers by causing them to pay out money for articles of clothing of a kind, quality and description which they did not order or intend to buy. Such representations, practices and methods have the tendency and capacity to cause and induce, and do in fact cause and induce members of the public to order clothing from respondent and to pay money therefor because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from

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competitors engaged in the sale of men's clothing in interstate commerce. There are, among the competitors of respondent, those who do not make use of the said methods used by respondent and who do not make the same or similar false and misleading representations as made by respondent and his salesmen, as herein set out.

PAR. 10. The above acts and things done by 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 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 November 12, 1935, issued and served its complaint in this proceeding upon respondent, Carlo Van Myers, doing business under the trade names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, 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 other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, before John J. Keenan, an examiner of the Commission, theretofore duly designated by it, counsel for respondent having failed to introduce testimony and other evidence in opposition to the allegations of the complaint; and said testimony and other 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 other evidence, and brief in support of the complaint, counsel for respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice thereof; 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. Respondent, Carlo Van Myers, doing business under the trade names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, trading under one or another of the aforesaid trade names, was engaged at the time of the issuance of the complaint herein and had been so engaged for more than three years prior thereto, in the sale and distribution in commerce between and among the various States of the United States of men's ready-made clothing, with his office and principal place of business in the city of New York, in the State of New York. Respondent, in the course and conduct of his said business, caused the clothing sold by him consisting of men's suits, trousers, overcoats, and topcoats, to be transported in commerce from his said place of business in New York, to, into, and through States of the United States other than New York to various and numerous persons in such other States to whom such clothing had been sold.

PAR. 2. During the time above mentioned, other individuals, firms, and corporations in various States of the United States were engaged in the sale and distribution in commerce between and among the various States of the United States, and in the District of Columbia, of men's clothing, consisting of suits, trousers, overcoats, and topcoats, and such other individuals, firms and corporations caused their said clothing, when sold by them, to be transported from the various States of the United States where they were located, to, into, and through States other than the States of origin of the shipment thereof. Respondent was, during the aforesaid time, in substantial competition, in the sale of his said clothing, with such other individuals, firms, and corporations.

PAR. 3. Respondent, in the sale of ready-made clothing, as aforesaid, made use of salesmen who solicited the general purchasing public in making sales of the same. Such salesmen were respondent's representatives and agents. They were contacted and secured by respondent by the insertion of advertisements under the heading "Salesmen Wanted," and others of like character, in newspapers and magazines published in various parts of the United States and of general circulation therein, of which the following is an example, to wit:

Clothing Men, Direct, Finest Spring Line, Suits, Topcoats \$16.85, Commission \$5.00. North American Clothes, 818 Broadway, New York.

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Upon replies to such advertisements being received and application forms being filed by those replying, respondent would send each of them what he designated as an "Authorization Certificate," together with order forms and books of samples. No adequate showing was required by respondent, of those who applied, nor was any adequate investigation made, as to their fitness, honesty, or reliability. Upon the receipt of such authorization, samples and other supplies, said representatives, so designated, thereupon went about among the purchasing public taking orders for clothing, which said orders were thereupon forwarded to respondent to be filled. Most of such representatives were accustomed to, and did make various false and misleading representations to those members of the public from whom they received orders, by reason of which said misrepresentations such orders were given, money was paid thereon and contracts entered into for the payment of the remainder due as provided in such contracts. Among such false and misleading representations made by representatives were the following:

(1) That the clothing offered for sale was all wool, or of fine quality.

(2) That it was to be made-to-measure, or tailor-made.

(3) That two garments were offered for the price of one.

(4) That extra trousers were to be furnished without extra charge.

(5) That the clothing ordered was to be like the samples selected, whether the ones selected were in respondent's sample book, or others secured by the salesmen.

(6) That prices quoted were special introductory prices.

(7) That a local store was to be opened soon.

(8) That choice of style of garment could be had, such as choice between single-breasted and double-breasted.

(9) That personal delivery of the garment ordered would be made by the salesman or by a tailor representing respondent, who would make necessary alterations.

(10) That fittings were to be had before the garment was completed.

(11) That respondent was a local concern, or one well known locally, such as the North American Tailoring Company, of Chicago, Illinois.

(12) That installment payments could be made on balance due after the down payment.

(13) That a discount was allowed for payment in full at time order was given.

(14) That the salesman was located at a given address and that his name was that given to the customer.

PAR. 4. Respondent, in the conduct of his business as aforesaid, had his office at 818 Broadway, New York City. For a time while using the trade name of National Brand Clothes Company he also used the address 105 Fifth Avenue, New York City, as a mailing address, where he rented desk space only. Respondent's place of business at 818 Broadway consisted of a small space partitioned off from a loft space occupied by a manufacturer of boy's clothing. Respondent had no employees except a young lady assistant and at times a stenographer. The furnishings of his office consisted of a desk and a couple of chairs. No stock of goods was kept on hand. As orders came in, respondent went to a manufacturer of men's clothing and selected the clothing to fill the orders. Respondent had no tailors employed either for making clothing or for alterations, nor did he have any interest in any clothing manufacturing concern. The clothing with which respondent filled orders was not all-wool but was either cotton or mostly cotton with a small mixture of wool or a cotton French back with wool in the facing. All of it was of very poor quality material. It was neither tailor-made clothing nor clothing altered to the size and fit of the wearer. It was all ready-made clothing of cheap workmanship. The prices quoted by respondent for his clothing were the regular prices for one suit or garment with no extra clothing at such prices. Extra trousers were furnished only at extra cost. The clothing delivered by respondent, generally speaking, was not of the same material or equal to the samples which he furnished his salesmen, nor was it the same material or equal to the samples shown by salesmen in cases where they used samples not furnished by the respondent. Respondent filled his orders for suits in one style of garment only and gave no choice as between single-breasted and double-breasted garments. All clothing was sent C. O. D. to the purchasers thereof. There were no personal deliveries, no alterations on delivery and no fittings. Respondent had no connection with any clothing concern outside of New York City and was not connected in any way with the North American Tailoring Company of Chicago, Ill. No payments by installments were allowed, nor was any discount given for full cash payment. Names and addresses given by salesmen were frequently fictitious. All such representations by his salesmen, as stated in the preceding paragraph, were false.

PAR. 5. Misrepresentations such as those hereinbefore referred to were made by respondent's salesmen during a period of approximately five years, during which he conducted his business under one or another of the trade names herein referred to. During such time continual complaints were registered by customers who either notified respondent direct or through complaints to the Post Office Depart-

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ment, various Better Business Bureaus, and the Federal Trade Commission. Such complaints were specifically brought to the attention of the respondent from time to time during such period. Regardless of such knowledge and information, the misrepresentations of salesmen continued as long as respondent was in business and respondent continued to accept and fill orders sent in by such salesmen after having been put upon notice that the orders so accepted were probably procured by means of misrepresentations. Respondent took no reasonable or adequate measures to rid himself of dishonest salesmen or to prevent customers from being victimized by their misrepresentations. Neither did respondent adequately, fully and generally make restitution for losses incurred by customers as a result of transactions based upon such misrepresentations. In some cases substitution of garments inferior to and unlike those ordered were made. In a few cases C. O. D. payments were returned, but in only rare instances were down payments made to salesmen refunded and then only after extended efforts made by the customers and others. In only rare cases were the amounts paid by customers for postage charges refunded. In nearly all cases of misrepresentations by salesmen, dilatory tactics were used by respondent so that the customer usually became discouraged and let the matter drop without adequate adjustment or none at all.

PAR. 6. Respondent encouraged, aided and abetted many of the aforesaid false and misleading representations of his salesmen by the means and methods as hereinafter set out. In his advertisements for salesmen he falsely represented that his clothing was of high grade and quality by such phrases as "Finest Spring Line." In his letters to prospective salesmen he represented his clothing as being of fine quality by the following statements:

National Brand Clothes Company, has made up a line of samples for spring and summer suits, including topcoats, which are superb in their designs, A-1, in their quality, and at a price to fit the pocketbook of the average customer.

Our line consists of over forty handsome patterns. A fine line of Union Made suits. Great values.

On each page of the sample book sent out to salesmen the following statement appears, which is seen and read not only by the salesmen but by the customers:

Fine Clothing Reasonably Priced.

Respondent assists in creating the impression that his clothing is tailor-made or made-to-measure by furnishing order blank forms to his salesmen on which are nine pictures of a tailor taking different

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measurements of a man for clothing. The following directions for measurements appear under the respective pictures:

- A. Take this measure over vest at breast snugly but not tight.
- B. Take this measure with coat on from collar seam to length wanted.
- C. Take this measure with coat on from seam at armhole to sleeve length wanted.
- D. Take this measure with coat on, from middle of back to armhole seam.
1. Around waist, over shirt but under vest, snug, but not tight.
2. Around fullest part of seat.
3. From well up in crotch to length desired.
4. From top of pants to length desired.

In addition, said order form had thereon the following blanks for the furnishing of information relative to the customer's build, size, and general conformation, such as would be required in making clothing to measure, to-wit:

Very Important

Age---- Weight---- Size now wearing---- Cuffs---- No Cuffs----

Answer Carefully

Neck measure?-----

Long, Medium, or Short Neck?-----

Regular, Sloping, High Shoulders?-----

Position: Regular, Erect, Stooping?-----

Vest Opening----- Vest Length?-----

Width of Knee----- Width of Bottom?-----

Is customer Regular, Slender or Stout?-----

Are Suspender Buttons Wanted?-----

Respondent's salesmen were accustomed to and did use such order blank forms as those above described in taking orders from customers and took the measurements as directed and secured the other information requested. All of this procedure had the effect of causing customers to believe that they would get made-to-measure clothing and caused them to accept and believe the salesmen's misrepresentations as hereinbefore set out.

Respondent, furthermore, furnished his salesmen with an attractive sample book containing sample swatches of clothing material. Many of such samples, to the ordinary observer, had the appearance of being all-wool or as being material of good quality with a considerable proportion of wool. Such samples aided respondent's dishonest salesmen in carrying on their deception as hereinbefore alleged. Many of respondent's salesmen in furtherance of their deceptive practices and misrepresentations applied stickers to respondent's samples, as well as to samples which they procured for their own use, denoting such materials as "Virgin Wool" and the like.

PAR. 7. Many of respondent's salesmen had been accustomed to use high grade all-wool samples in taking orders, which said samples were totally different from and much superior to the samples furnished by respondent, as well as being far superior to the materials used by him in filling orders. Respondent was well informed of this practice through customer complaints and through other agencies and was well aware of the same during said period in which he conducted said business. In spite of such knowledge, respondent continued to fill orders sent in by salesmen engaging in such practice and to send out suits thereon of inferior materials. Respondent continued to fail to make restitution in many such cases after complaints were made.

PAR. 8. Respondent, in a great proportion of the orders taken by salesmen and filed by him, sent out clothing of different material, pattern or color or of material inferior in quality to that selected, or differing in all or several of such respects from that ordered. In a great many cases, in filling orders, respondents sent out clothing in sizes widely at variance from the sizes ordered and so wholly unsuited in size to the customer ordering the same that it could not possibly be used. Such variances in size were in some cases as much as four or five sizes too small or too large. In many cases orders were filled by sending clothing not of the ready-made size that would be indicated by the customer's measurements. Except in special instances, all orders received by respondent were filled by sending so-called "regular" sizes. No alterations were made in such clothing by respondent so as to make it conform as near as might be to the measurements submitted.

PAR. 9. Respondent's practices as heretofore set out in connection with the misrepresentations of his salesmen and in filling their orders, became so general and continued for such a period of time as to become a system of business and a method of competition. He knowingly and deliberately, over a period of years, took advantage of the misrepresentations and fraudulent practices of his salesmen to the detriment and loss of his customers. He knowingly profited by such transactions and continued to do so after notice of the misrepresentations involved had been specifically brought to his attention by customers and others.

PAR. 10. The representations of respondent through his salesmen and otherwise as aforesaid had the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars aforesaid and did in fact so deceive them and induce them to give orders for respondent's clothing and to pay money to respondent and his salesmen therefor. The practices and methods used as hereinbefore set out resulted in defrauding members of the public as afore-

said by inducing them to pay out money for articles of clothing of a kind, quality, and description which they did not order or intend to buy. Such orders were given by members of the public and money paid thereon because of the erroneous beliefs engendered as above set out. Such practices and methods diverted trade to respondent from competitors engaged in the sale of men's clothing in commerce between and among the various States of the United States and in the District of Columbia. There were among the competitors of respondent those who did not make use of the same or similar misleading and fraudulent methods used by respondent and his salesmen as herein set out and respondent's said acts and practices tended to and did in fact divert business to respondent from his said competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of respondent, Carlo Van Myers, doing business under the trade names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, are to the prejudice of the public and of respondent's 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, the answer of respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief in support of the complaint, counsel for respondent having failed to introduce evidence in respondent's behalf, and having failed to file a brief, although given opportunity so to do, and having failed to appear at the time and place set for oral argument, after due notice of the same, 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, Carlo Van Myers, an individual, trading and doing business under the trade names and styles North

American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, or under any other trade names or styles or through any corporate or other device, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of men's clothing in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication, or through salesmen:

1. That said clothing is all-wool or is of fine quality;
2. That said clothing is made-to-measure or is tailor-made;
3. That two garments are included in the price of one;
4. That extra trousers are furnished without extra charge;
5. That the prices quoted are special introductory prices or are other than the regular prices for said clothing, unless said prices are, in fact, lower than the regular prices ordinarily charged for said clothing;
6. That said clothing will be of the same material as the samples exhibited to purchasers and prospective purchasers, unless and until the clothing actually furnished said purchasers is identical with the samples exhibited;
7. That personal delivery of clothing will be made;
8. That a choice of style of garment is offered, such as a choice between single breasted and double breasted;
9. That fittings will be given or that alterations will be made;
10. That said clothing is sold on an installment plan;
11. That discounts are given for payment in full at the time the order for clothing is given;
12. That the business operated by the respondent is a local concern or is one that is well known locally;
13. That the respondent conducts any local retail stores or that any local retail stores will be opened in the purchaser's neighborhood;
14. Through the use of swatch books or sample books wherein various materials are exhibited, or through any other means or in any other manner, that respondent can and will fill orders for clothing ordered from samples so exhibited, with the identical materials of the same quality and color, when such is not the fact.

It is further ordered, That the respondent shall, within 60 days after 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 this order.

Syllabus

IN THE MATTER OF

ISRAEL ZELKIND, TRADING AS LAWRENCE
BLANKET MILLS

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

Docket 2984. Complaint, Nov. 17, 1936—Decision, Feb. 1, 1937

Where an individual engaged in the sale and distribution of blankets made by others, and in causing said products to be shipped and transported from the place at which made to purchasers thereof located at various points in other States, in competition with many who manufacture, sell, and distribute blankets without in any way representing the same as actually made from wool, unless in fact so made, and with many who sell and distribute such articles without being the manufacturers thereof and thus representing themselves—

- (a) Featured legend on letterheads and invoices distributed to customers and prospective customers in which was set forth his trade name, including word "Mills," together with words "Manufacturers of All Wool Camp and Institution Blankets" and words "Mill at," aforesaid point from which he caused said articles to be shipped and transported, notwithstanding fact he did not own, operate, or control any mill for manufacture of blankets from the raw materials, was not engaged in manufacturing, and was not a manufacturer as understood by trade and public generally, for direct dealing with which there is a preference on the part of a substantial portion of wholesale and retail purchasers of such goods as securing them, in their belief, closer prices, superior quality, and other advantages, as compared with dealing with broker or middleman; and
- (b) Caused his said blankets to be labeled "all wool" or "woolen," and as "fully shrunk," notwithstanding fact said products, thus labeled, advertised, and sold by him, were not fully shrunk, nor composed wholly of wool, for which there is a preference on the part of a substantial portion of the purchasing public, as compared with such products made from materials other than wool, or products made only in part of wool;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations were true, and with effect of placing in the hands of wholesalers and retailers means whereby said blankets were passed off to said public as all wool goods, and with the result, as a direct consequence of such mistaken and erroneous beliefs thus engendered, that consuming public purchased substantial volume of the said products, and trade was unfairly diverted to him from competitors likewise engaged in selling and distributing such articles, and who truthfully advertise and represent the nature and character of their business and that of the materials used in the manufacture of their products; to the substantial injury of competition in commerce:

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Meyer Cohan, of Worcester, Mass., for respondent.