

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.

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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 Israel Zelkind, an individual trading as Lawrence Blanket Mills, hereinafter referred to as respondent, has been, and is now, using unfair methods of competition in commerce, as "commerce" is defined in said act, and if appearing to the 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. Respondent, Israel Zelkind, is an individual, trading as Lawrence Blanket Mills, whose office and place of business is at 9-13 Winter Street, Worcester, Mass.

Respondent is now, and for several years last past has been, engaged in the sale and distribution of blankets to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and for several years last past has caused, his products when sold by him, to be shipped from Wilsonville, Conn., the place at which said blankets are manufactured, to the purchasers thereof, located in the various States of the United States, and in the District of Columbia. There is now, and has been for several years last past, a constant current of trade and commerce, by the respondent, in blankets, between and among the various States of the United States, and in the District of Columbia.

Respondent is, and for several years last past has been, in substantial competition with other individuals, firms, and corporations, engaged in the sale of blankets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the cause and conduct of his business, as described in paragraph 1 hereof, respondent offers for sale and sells his blankets labeled "All Wool" or "Woolen" and as "Fully Shrunk."

In truth and in fact the blankets so described and represented are not composed wholly of wool and they do not contain wool in amounts sufficient to justify the designation, "All Wool" or "Woolen." Said blankets are not fully shrunk, as alleged.

PAR. 3. Respondent's invoices distributed wherever his blankets were sold, and also his letterheads bore the following legend:

LAWRENCE BLANKET MILLS

Manufacturers of

All Wool Camp and Institution Blankets

Mill at Wilsonville, Conn.

In truth and in fact respondent does not manufacture the said blankets offered for sale and sold by him, nor does he own, operate, or control a factory where blankets are manufactured.

It is a common belief among wholesalers, retailers, and the purchasing public, that a superior grade of merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price. The representations made by respondent, as alleged in paragraph 3 hereof, have the tendency and capacity to mislead and deceive the purchasers of respondent's blankets into the belief that when they purchase said blankets from respondent, they are dealing with the manufacturer of said blankets purchased and thereby are gaining an advantage by saving the middleman's cost.

PAR. 4. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive and does mislead wholesalers, retailers, and a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said blankets on account of such erroneous belief. By said practices, respondent also places in the hands of wholesalers and retailers the means whereby said blankets are passed off to the purchasing public as all wool blankets. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of blankets who do not misrepresent the kind, quality, and character of their products, nor the nature and kind of business they are engaged in, who likewise advertise, sell, and distribute their blankets among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors, thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 5. The above alleged acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors and constitute unfair methods of competition in 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 17, 1936, issued, and on

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November 19, 1936, served, its complaint in this proceeding upon respondent Israel Zelkind, an individual trading as Lawrence Blanket Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint the respondent filed his answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. 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, Israel Zelkind, is an individual, trading as Lawrence Blanket Mills. His principal office and place of business is at 9-13 Winter Street, Worcester, Mass.

He is now, and for several years last past has been, engaged in the sale and distribution of blankets. When orders are received for respondent's blankets he causes them to be shipped and transported from Wilsonville, Conn., the place at which said blankets are manufactured, to the purchasers thereof located at various points in States of the United States other than the State of Connecticut. The respondent has, at all times during the past several years, maintained a constant current of trade in said blankets, in commerce, among and between the various States of the United States and in the District of Columbia.

At all times during the last several years, the respondent has been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of selling and distributing, or of manufacturing, selling and distributing blankets, in commerce, among and between the several States of the United States and in the District of Columbia.

PAR. 2. On his letterheads and invoices, distributed throughout the various States of the United States to customers and prospective customers, the respondent prominently and conspicuously displays the legend:

LAWRENCE BLANKET MILLS

Manufacturers of

All Wool Camp and Institution Blankets

Mill at Wilsonville, Conn.

The use of the word "mills" in his trade name together with the statements "Mill at Wilsonville, Conn." and "Manufacturers of" on his letterheads and invoices, serve as representations to respondent's customers and the general buying public that the respondent owns, operates, or controls a mill wherein woolen materials are converted or manufactured into blankets.

PAR. 3. The respondent does not, in fact, own, operate, or control any mill or mills for the manufacture of blankets from the raw materials. Respondent is not engaged in the business of manufacturing and is not himself a manufacturer as those terms are understood by the trade and the purchasing public generally, but is solely in the business of selling and distributing blankets manufactured from the raw materials by others.

PAR. 4. A substantial portion of the wholesale and retail purchasers of blankets have a preference for dealing direct with the manufacturer of the products being purchased. Such purchasers believe that they secure closer prices, superior quality and other advantages in dealing direct with a manufacturer rather than a broker or middleman.

PAR. 5. In order to further induce the purchase of blankets he sells, respondent causes his blankets to be labeled "all wool" or "woolen," and as "fully shrunk." These designations serve as representations to customers, prospective customers, and the purchasing public generally, that said blankets are made of wool and are fully shrunk. The blankets labeled, advertised, and sold by respondent as "all wool" or "woolen" and "fully shrunk," are not composed wholly of wool and are not fully shrunk.

PAR. 6. A substantial portion of the purchasing public has a preference for blankets made wholly of wool over blankets made from materials other than wool or blankets that are only part wool.

PAR. 7. Many of respondent's competitors who manufacture, sell and distribute blankets do not in any way represent that said blankets are actually made from wool unless such is the fact.

Many of respondent's competitors who sell and distribute blankets do not manufacture the products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 8. The false and misleading statements and representations made by respondent in designating himself as a manufacturer by the use of the word "Mills" in his trade name, and the expressions "Mill at Wilsonville, Conn." and "Manufacturers of" on his letterheads and invoices, and in labeling or describing the blankets he offers for sale and sells as "all wool" or "woolen" and "fully shrunk," have had and do have the capacity and tendency to mislead and deceive a sub-

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stantial portion of the purchasing public into the erroneous belief that all of said representations are true. By said practices, respondent also places in the hands of wholesalers and retailers the means whereby said blankets are passed off to the purchasing public as all wool blankets. As a direct consequence of the mistaken and erroneous beliefs, induced by the false and misleading statements and representations above referred to, the consuming public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the business of selling and distributing blankets, who truthfully advertise and represent the nature and character of their business and the nature and character of the materials used in the manufacture of their products. As a result thereof substantial injury has been and is now being done by respondent to competition, in commerce, among and between the various States of the United States and of the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent Israel Zelkind, trading as Lawrence Blanket Mills, 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 and the answer filed herein on December 16, 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 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, Israel Zelkind, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of blankets in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. The use of the word "woolen" or the words "all wool," alone or in conjunction with any other word or words, as descriptive of its blankets not made of wool, and from the use of the word "wool," or "woolen" or of any other word or words of similar meaning, in any way, so as to import or imply that the products to which the said word or words refer are composed of wool, when such is not the fact;

2. Representing that his blankets are "fully shrunk," when such is not the fact;

3. The use of the word "mills" as part of his trade name, and from the use of the word "mill," or "mills," or the words "manufacturers of," or of any other word or words of similar import in his business or advertising literature, or in any other way, so as to import or imply that he makes or manufactures the products which he sells, or that he actually owns and operates, or directly and absolutely controls the mill or mills or factory wherein said products are manufactured, 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.

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IN THE MATTER OF
QUALITY DISTILLERS, INC.

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

Docket 2391. Complaint, May 16, 1935—Order, Feb. 2, 1937

Consent order requiring respondent corporation, its officers, etc., in connection with sale or offer, in interstate commerce and in District of Columbia, of whiskies, gins, and other alcoholic beverages produced by it, but excepting gins produced by it through process of rectification whereby alcohol purchased, but not produced, by it is redistilled as specified, to cease and desist from representing, through use of word "Distillers" in its corporate name and on its stationery, advertising, etc., or in any other way, that it is a distiller of whiskies, gins, or other alcoholic beverages or that said whiskies, etc., were by it made through process of distillation, or that it owns, operates, or controls a place where such products are thus made, unless and until it shall own, operate, or control a place or places where such products are by it manufactured through process of original and continuous distillation from mash, wort or wash through continuous closed pipes and vessels until manufacture is complete.

Mr. PGad B. Morehouse for the Commission.

Mr. Paul Loewenthal, of Los Angeles, Calif., 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 Quality Distillers, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and in violation of the Act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act," and it appearing to the 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:

Count 1

PARAGRAPH 1. Respondent is a corporation organized and existing and doing business under the laws of the State of California, with its office and principal place of business in Los Angeles, in the said

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