

IN THE MATTER OF
PIKE-HANSEN, INC.

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

Docket 2938. Complaint, Oct. 2, 1936—Decision, Mar. 10, 1937

Where a corporation engaged in the offer and sale of men's clothing through some five hundred traveling salesmen whom it equipped with order blanks containing spaces for the individual measurements of each purchaser and with samples of materials for purchaser's selections as to color, weave, and quality of material from which the suit or other garment was to be made, and price of which varied according to quality of material selected, and who solicited and accepted orders for such clothing, taking purchaser's measurements and recording such and other information regarding his weight, height, etc., on the order blank, and forwarding same and collecting substantial part of agreed purchase price at time of acceptance of order, with balance payable upon delivery; and such agents or representatives, as case might be—

- (a) Represented and implied to prospective purchasers of its said clothing that it would make for and deliver to them made-to-measure or tailor-made garments made from material of the color, weave and quality selected from the samples exhibited, notwithstanding fact that garments delivered, in many instances, were not made-to-measure or tailor-made, as understood by purchasing public, did not fit in same manner as do such garments, due to lack of experience or skill on the part of its salesmen and its employees in making up the same, and, in some instances, did not fit at all or with any reasonable relation to individual to whom delivered, and, in many instances, were so cut and constructed that it was not possible for expert tailors to alter same so as to make them fit, and its failure and refusal to return purchase money received from such purchasers or to deliver to them garments that would fit;
- (b) Represented to purchasers of its said clothing that it would make for and deliver to them garments from materials of the color, weave, and quality selected by such purchasers from samples furnished to its salesmen or exhibited to such purchasers, notwithstanding fact, in many instances, it did not deliver to purchaser garment thus made, but delivered one made from material which it had substituted for that selected by purchaser and which was different in color and weave from and inferior in quality to material selected, and failure and refusal in such instances to return purchase money received or deliver garment made from material selected; and
- (c) Represented, in soliciting sale of its said clothing, to many prospective purchasers, that delivery would be made to them by salesmen or agent in person, so as to afford them opportunity to inspect the garment ordered as to material from which made and as to fit, prior to payment of balance of purchase money due it, notwithstanding fact garment was shipped to purchaser by parcel post, cash on delivery for balance of purchase money, no inspection was permitted, and its failure and refusal to return purchase price received or permit inspection before delivery;

With effect of misleading and deceiving many purchasers and causing them erroneously to believe that garments sold by it were made-to-measure or tailor-made, as understood by purchasing public, that garments would be made from materials selected by purchasers and be delivered by person taking order, and that inspection would be permitted prior to payment of balance as aforesaid, and of causing many prospective purchasers, because of such erroneous beliefs, to buy clothing from it, and of thereby unfairly diverting trade in commerce to it from its competitors who do not use acts, practices and methods employed by it; to their substantial injury and that of the public:

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

Mr. Edw. W. Thomerson for the Commission.

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 Pike-Hansen, 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 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. Respondent Pike-Hansen, Inc., is a corporation existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1113 North Franklin Street, in the city of Chicago, State of Illinois.

Respondent is now, and has been for several years last past, engaged in the business of offering for sale and selling men's clothing through salesmen or agents who travel throughout the United States soliciting and accepting orders for such clothing.

Respondent causes said clothing, when sold, to be transported from its said place of business in the city of Chicago, State of Illinois, into and across the several States of the United States to the purchasers thereof located at various points in the said several States of the United States other than the State of Illinois.

Respondent, in the course and conduct of its business in said commerce as aforesaid, is in substantial competition with other corporations and with associations, partnerships, and persons engaged in commerce between and among the several States of the United States in the business of selling and distributing men's clothing. Among the competitors of the respondent are many who sell their clothing in said commerce through salesmen or agents and who do not use

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the acts, practices, and methods in the sale thereof used by the respondent in the sale of its clothing as hereinafter alleged.

PAR. 2. Respondent, in the course and conduct of its business as aforesaid, employs approximately 500 salesmen or agents located throughout the several States of the United States to solicit and accept orders for its said clothing. These salesmen or agents are equipped by the respondent with order blanks, containing spaces for the taking of the individual measurements of each purchaser, and with samples of materials from which the purchasers make selections as to color, weave, and quality of the material from which the suit or other garment ordered is to be made. The prices at which said clothing is sold vary according to the quality of the material selected and said salesmen or agents collect from the purchasers of said clothing a substantial part of the agreed purchase price at the time the order is accepted and the balance of the purchase price is to be paid when the purchase is delivered. When a salesman or agent sells a garment, such salesman or agent takes the measurements of the purchaser and places this and other information regarding the weight, height, general build and appearance, etc. of the purchaser, together with a number identifying the material selected by the purchaser on the said order blank, and forwards the same to the respondent at its said place of business in Chicago, Ill., where the garment ordered is purportedly made from the material selected to the individual measurements of the purchaser of the garment.

PAR. 3. Made-to-measure or tailor-made clothing is understood by the trade and purchasing public generally to be and mean garments which are cut and made to the individual measurements of the person for whom intended. In order to make a made-to-measure or tailor-made garment as understood by the trade and purchasing public, it is necessary and essential that a person, experienced and skilled in taking and making measurements for such garments, measure the person for whom the garment is to be made, so as to convey to the tailor actually making the garment accurate and exact measurements and the information regarding the weight, height, general build and appearance, etc. of the person measured. To secure this information with any degree of accuracy and exactness requires experience and skill on the part of the person taking or making the measurements. There exists among the purchasing public the belief that made-to-measure or tailor-made garments fit with more accuracy than do garments which are not so made and there exists a preference on the part of a substantial portion of the purchasing public for made-to-measure or tailor-made garments.

PAR. 4. Respondent, in the course and conduct of its business and by the means and in the manner aforesaid, represents and implies to prospective purchasers of its said clothing that it will make for, and deliver to, purchasers of its clothing made-to-measure or tailor-made garments made from materials of the color, weave, and quality selected by purchasers from the samples exhibited by its salesmen or agents. In truth and in fact, in many instances, the garments delivered by the respondent to purchasers are not made-to-measure or tailor-made garments, as that term is understood by the purchasing public as above alleged. Because of the lack of experience and skill on the part of its salesmen or agents in making and taking measurements and securing accurate information regarding the weight, height, general build and appearance, etc. of purchasers or because of the lack of skill on the part of its workmen in making the garments, the garments delivered do not fit in the same manner as do made-to-measure or tailor-made garments and in some instances do not fit at all or with any reasonable relation to the individual to whom they are delivered. In many instances, the garments delivered to purchasers are so cut and constructed that it is not possible for expert tailors by alteration to make them fit and the respondent fails and refuses to return the purchase money received from the purchasers of said garments or to deliver to them garments that will fit.

PAR. 5. Respondent, in the course and conduct of its business as aforesaid, represents to purchasers of its said clothing that it will make for, and deliver to, them garments made from materials of the color, weave, and quality selected by such purchasers from the samples furnished to its salesmen or agents by the respondent and by said salesmen or agents exhibited to said purchasers.

In truth and fact, in many instances, the respondent does not deliver to a purchaser a garment made from the material selected by such purchaser, but delivers a garment made from a material which it has substituted for the material selected by the purchaser and which is different in color and weave from, and inferior in quality to, the material selected by the customer. The respondent in such instances fails and refuses to return the purchase money received or to deliver a garment made from the material selected.

PAR. 6. Respondent's salesmen or agents, in soliciting the sale of its said clothing and for the purpose of inducing prospective purchasers to purchase said clothing, represent to many such prospective purchasers that delivery will be made to them by the salesman or agent in person so as to afford purchasers an opportunity to inspect the garment ordered as to the material from which made and as

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to its fit prior to the time payment is made of the balance of the purchase money due the respondent. In truth and fact, in many such instances, the garment is shipped to the purchaser by parcel post, cash on delivery for the balance of the purchase money, and no inspection is permitted; and the respondent fails and refuses to return the purchase money received or to permit inspection of the garment before delivery is made.

PAR. 7. The aforesaid acts, practices, and methods of the respondent have the capacity and tendency to and do mislead and deceive many purchasers and cause them erroneously to believe that the garments sold by the respondent are made-to-measure or tailor-made garments, as those terms are understood by the purchasing public; that the garments ordered will be made from the materials selected by the purchasers and will be delivered by the person taking the order, and that inspection will be permitted prior to the payment of the balance of the purchase money to the respondent. Said acts, practices, and methods have the capacity and tendency to and do cause many prospective purchasers, because of said erroneous beliefs, to purchase clothing from the respondent, thereby unfairly diverting trade in said commerce to the respondent from its competitors who do not use the acts, practices, and methods used by the respondent, to the substantial injury of said competitors and to the injury of the public.

PAR. 8. The above alleged acts, practices, and methods of the respondent are all to the injury and prejudice of the public and of the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the 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."

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 October 2, 1936, issued its complaint in this proceeding against Pike-Hansen, 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 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, which 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. Respondent, Pike-Hansen, Inc., is a corporation existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1113 North Franklin Street, in the city of Chicago, State of Illinois, and it is now, and has been for several years last past, engaged in the business of offering for sale and selling men's clothing through salesmen or agents who travel throughout the United States soliciting and accepting orders for such clothing. Respondent causes said clothing, when sold, to be transported from its place of business in Chicago, Ill., to the purchasers thereof located at various points in the States of the United States other than the State of Illinois.

Respondent is in substantial competition with other corporations and with associations, partnerships, and persons engaged in commerce between and among the several States of the United States in the business of selling and distributing men's clothing. Among the competitors of the respondent are many who sell their clothing in said commerce through salesmen or agents and who do not use the acts, practices, and methods in the sale thereof used by the respondent in the sale of its clothing as hereinafter set out.

PAR. 2. Respondent, in the course and conduct of its business as aforesaid, employs approximately 500 salesmen or agents located at various points throughout the United States to solicit and accept orders for its said clothing. These salesmen or agents are equipped by the respondent with order blanks, containing spaces for the taking of the individual measurements of each purchaser, and with samples of materials from which the purchasers make selections as to color, weave, and quality of the material from which the suit or other garment ordered is to be made. The prices at which said clothing is sold vary according to the quality of the material selected and said salesmen or agents collect from the purchasers of

said clothing a substantial part of the agreed purchase price at the time the order is accepted and the balance of the purchase price is to be paid when the purchase is delivered. When a salesman or agent sells a garment such salesman or agent takes the measurements of the purchaser and places this and other information regarding the weight, height, general build and appearance, etc., of the purchaser, together with a number identifying the material selected by the purchaser on the said order blank, and forwards the same to the respondent at its said place of business in Chicago, Ill., where the garment ordered is purportedly made from the material selected to the individual measurements of the purchaser of the garment.

PAR. 3. Made-to-measure or tailor-made clothing is understood by the trade and purchasing public generally to be and mean garments which are cut and made to the individual measurements of the person for whom intended. In order to make a made-to-measure or tailor-made garment as understood by the trade and purchasing public, it is necessary and essential that a person experienced and skilled in taking and making measurements for such garments, measure the person for whom the garment is to be made, so as to convey to the tailor actually making the garment accurate and exact measurements and information regarding the weight, height, general build and appearance, of the person for whom the garment is to be made. To secure this information with any degree of accuracy and exactness requires experience and skill on the part of the person taking the measurements. There exists among the purchasing public the belief that made-to-measure or tailor-made garments fit with more accuracy than do garments which are not so made and there exists a preference on the part of a substantial portion of the purchasing public for made-to-measure or tailor-made garments.

PAR. 4. Respondent represents and implies to prospective purchasers of its said clothing that it will make for, and deliver to, purchasers of its clothing made-to-measure or tailor-made garments made from material of the color, weave, and quality selected by purchasers from the samples exhibited by its salesmen or agents. In truth and in fact, in many instances, the garments delivered by the respondent to purchasers are not made-to-measure or tailor-made garments, as that term is understood by the purchasing public. Because of the lack of experience and skill on the part of its salesmen or agents in making and taking measurements and securing accurate information regarding the weight, height, general build and appearance of purchasers or because of the lack of skill on the part of its workmen in making the garments, the garments delivered do not fit in the same manner as do made-to-measure or

tailor-made garments and in some instances do not fit at all or with any reasonable relation to the individual to whom they are delivered. In many instances, the garments delivered to purchasers are so cut and constructed that it is not possible for expert tailors by alteration to make them fit and the respondent fails and refuses to return the purchase money received from the purchasers of said garments or to deliver to them garments that will fit.

PAR. 5. Respondent represents to purchasers of its said clothing that it will make for, and deliver to, them garments from materials of the color, weave, and quality selected by such purchasers from the samples furnished to its salesmen or agents exhibited to said purchasers.

In truth and fact, in many instances, the respondent does not deliver to a purchaser a garment made from the material selected by such purchaser, but delivers a garment made from a material which it has substituted for the material selected by the purchaser, and which is different in color and weave from, and inferior in quality to, the material selected by the customer. The respondent in such instances fails and refuses to return the purchase money received or to deliver a garment made from the material selected.

PAR. 6. Respondent's salesmen, or agents, in soliciting the sale of its said clothing and for the purpose of inducing prospective purchasers to purchase said clothing, represent to many such prospective purchasers that delivery will be made to them by the salesmen or agent in person so as to afford purchasers an opportunity to inspect the garment ordered as to the material from which made and as to its fit prior to the time payment is made of the balance of the purchase money due the respondent. In truth and fact, in many such instances, the garment is shipped to the purchaser by parcel post, cash on delivery for the balance of the purchase money, and no inspection is permitted; and the respondent fails and refuses to return the purchase money received or to permit inspection of the garment before delivery is made.

PAR. 7. The aforesaid acts, practices, and methods of the respondent have the capacity and tendency to and do mislead and deceive many purchasers and cause them erroneously to believe that the garments sold by the respondent are made-to-measure or tailor-made garments as those terms are understood by the purchasing public; that the garments ordered will be made from the materials selected by the purchasers and will be delivered by the person taking the order, and that inspection will be permitted prior to the payment of the balance of the purchase money to the respondent. Said acts, practices, and methods have the capacity and tendency to and

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do cause many prospective purchasers, because of said erroneous beliefs, to purchase clothing from the respondent, thereby unfairly diverting trade in said commerce to the respondent from its competitors who do not use the acts, practices, and methods used by the respondent, to the substantial injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent Pike-Hansen, Inc., a corporation, 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 February 24, 1937, 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, Pike-Hansen, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of clothing for men in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That clothing sold by it is made-to-measure or tailor-made, unless and until such clothing is actually and accurately made by competent tailors to fit the customer in accordance with his correct measurements taken by a person who is competent to take such measurements;

2. That it will make clothing from materials of the color, weave and quality selected by customers from samples exhibited, unless and until the clothing is made from material of the color, weave and quality selected;

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3. That customers will be afforded an opportunity to inspect clothing purchased prior to the time full payment for the clothing is made, unless and until such inspection is permitted.

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

IN THE MATTER OF
MUTUAL STORES, INC.

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

Docket 2550. Complaint, Sept. 12, 1935—Decision, Mar. 25, 1937

Where a corporation engaged in the general business of merchandising in the District of Columbia, and in operating two stores therein, perfected a number of years theretofore chiefly to engage in purchase and resale at retail of surplus, reject and refuse goods procured from the Army and Navy, which (1) were sold in substantial quantities thereby during the early 1920's, but sale of which (2) began to be curtailed sharply about 1927 and during the two or three years immediately preceding, because of exhaustion of the supplies thereof, and which (3) since 1932 were not available in any substantial quantity through retail stores of type operated by it, and since 1935 and 1936, virtually not at all—

Placed its corporate name, with words "Men's Wear," "Shoes," etc., and "Army and Navy Goods," in large and conspicuous signs about its mercantile establishment and in other advertising literature, notwithstanding facts aforesaid, and that at no time since its organization had it ever procured or possessed any quantity of such surplus, reject and refuse goods in excess of five percent of its total inventory;

With the result that various members of the purchasing public formed the conclusion or received the impression and belief from words "Army and Navy" that goods to be purchased in its stores were substantially all, if not all, procured from the Army and Navy, and were of the quality and nature used thereby, and that by reason of such fact a better quality merchandise at substantial savings in price was obtained from its said stores, and substantial number of such members were induced, by virtue of such beliefs or impressions, to make purchases of and from it, and with tendency and capacity thus to mislead and deceive such members, and with effect of unfairly diverting trade to it from its competitors who sell and offer to sell merchandise identical with bulk of its inventory and procured, like it, from same source and ordinary marts of trade, but who do not make use of such misleading and deceptive practice; to be substantial injury of substantial competition in said District:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. Alfred M. Schwartz, of Washington, D. C., for respondent.