

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.

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 the Mutual Stores, 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 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. The said respondent, Mutual Stores, Inc., is a corporation organized and existing under and by virtue of the laws of the District of Columbia, and having and maintaining its principal office and place of business in the city of Washington, in the District of Columbia, and said respondent is now and has been for at least one year previous hereto, engaged in the general business of merchandising.

During the course of merchandising on the part of the respondent, the said respondent has maintained a constant and current course of commerce within the District of Columbia and has sold and has caused to be sold various and different articles of merchandise in which the respondent deals to various dealers and members of the purchasing public within the District of Columbia, in connection with and in the course of which sales respondent has caused and still causes merchandise in which it deals to be transported from its place of business into and through the various parts of the District of Columbia to purchasers located therein.

In the course and conduct of its aforesaid business, respondent is and has been in substantial competition with other individuals, co-partnerships, and corporations engaged in the selling and transportation of like merchandise within the District of Columbia.

PAR. 2. For the period last above related, said respondent has operated under the corporate name of Mutual Stores, Inc., and during the course and conduct of its business has advertised and caused to be advertised by it through the medium of certain legends, signs and symbols falsely indicating and suggesting by inference that the said respondent does, in fact, deal exclusively in goods supplied by the Army and Navy Departments of the United States Government, when, in fact, it does not.

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The following statement was contained in the advertisements of the respondent :

MUTUAL STORES, INC.**Army and Navy Goods****Men's Wear—Shoes. Sport Goods—Luggage**

The said respondent further caused to be listed under the classified heading of the telephone directory of the city of Washington, District of Columbia, the name of its business, the telephone number of the same and the further descriptive words "Army and Navy Goods Business."

The practices of respondent as stated have had and have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the goods to be purchased of the respondent are derived from the Army and Navy Departments of the United States Government when in fact they are not. In truth and in fact none of the stock of merchandise of said respondent is purchased from the Army and Navy or at any Army and Navy surplus or refuse goods sales. The small amount of such Army and Navy goods carried by said respondent, if any, is bought from jobbers, wholesalers, and others who buy at such Army and Navy refuse goods sales. The remainder of the said respondent's stock of merchandise consists of the usual stock found in general merchandise establishments and is purchased in the marts of commerce in which the general merchant buys his stock of goods. The said respondent is in no way connected with the Army and Navy, and the major portion of the stocks of goods, wares, and merchandise as offered for sale by respondent consists of ordinary goods, wares, and merchandise as derived from the common marts of trade and not from the Army and Navy Departments of the United States, except solely goods not readily marketable and which have been purchased by the respondent some years previously hereto and which said goods are in minute quantities.

PAR. 3. There are among the competitors of said respondent individuals, partnerships, copartnerships, and corporations engaged in the sale and distribution of like and similar materials and merchandise within the District of Columbia, which said individuals, partnerships, copartnerships and corporations do not misrepresent their merchandise by the use of a false and misleading advertisement or advertisements as to the source of origin or the quality of material so advertised.

PAR. 4. The acts alleged to have been done by the respondent are all to the injury and prejudice of the public and of a substantial

number of the competitors of the respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on September 12, 1935, issued and served its complaint in this proceeding upon respondent Mutual Stores, Inc., 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 thereto, testimony and evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, attorney for the Commission, before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Alfred M. Schwartz, attorney for the respondent, 643 Munsey Building, Washington, D. C.; and said testimony and evidence was 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 evidence, briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; 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, Mutual Stores, Inc., is a corporation existing under and by virtue of the laws of the District of Columbia and having and maintaining its principal office and place of business in the city of Washington in the District of Columbia. It is now, and has been for more than two years, engaged in the general business of merchandising. Respondent operates two stores in the city of Washington, in the District of Columbia, one located at 9th and E Streets, N. W. and the other located at 9th and D Streets, NW.

PAR. 2. The present corporation was perfected in 1928, by one Nathan Shapiro and Herbert Silverstone, chiefly for the purpose of engaging

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in the purchase and resale at retail of surplus, reject, and refuse goods procured from the Army and Naval Departments of the United States Government. Since the date of its organization the respondent has been unable to secure from said Army and Navy Departments of the United States Government or from other sources a substantial quantity of surplus, reject, or refuse goods and has never and does not now procure or possess any quantity of such goods in excess of 15 percent of its total inventory.

PAR. 3. During the years 1922, 1923, and 1924, the Army and Navy Departments of the United States Government sold, or were responsible for the sale of, a substantial quantity of surplus, reject, and refuse goods; but about the year 1927 and the two or three years immediately prior thereto began sharply to curtail, because of the exhaustion of the supply of such goods, the sale of surplus, reject, and refuse goods; and since the year 1932 there has not been available for sale and offered for sale for resale through retail stores of the type operated by the respondent any substantial quantity of surplus, reject, and refuse goods from the Army and Navy Departments of the United States Government. During the years 1935 and 1936 virtually no goods fit for resale in retail stores, such as those operated by the respondent, have been offered for sale by these Departments.

The goods formerly offered for sale by the Army and Navy Departments of the United States Government were ultimately purchased for the conduct of retail stores and for sale to the retail trade by the respondent and various persons, partnerships, and other corporations engaged in the conduct of retail mercantile establishments approximately identical with the mercantile establishments of the respondents.

The inventory of the respondent reflects the decrease in the surplus, refuse, and reject goods of the Army and Navy Departments of the United States Government offered for sale in that its inventory has never revealed more than 10 to 15 percent of its goods as being surplus, refuse, or reject goods from the Army and Navy Departments of the United States.

PAR. 4. There are no goods now being offered, nor, since the year 1932, have there been any substantial amount of goods offered for sale by the Army or Navy Department of the United States Government suitable for resale in retail establishments similar to those operated by the respondent.

PAR. 5. The respondent caused its merchandise to be advertised by placing its corporate name "Mutual Stores, Inc." "Men's Wear," "Shoes," "Sport Goods," "Luggage," and "Army and Navy Goods" in large and conspicuous signs about its mercantile establishment located

at 9th & D Streets, NW., Washington, D. C. and in other advertising literature.

PAR. 6. Various members of the purchasing public upon observing the words "Army and Navy" in connection with the advertising of the respondent have formed the conclusion, or received the impression and belief, that the goods to be purchased in respondent's stores were substantially all, if not all, procured from the Army and Navy Departments of the United States Government; that the goods were of the quality and nature used by said Departments; that, by reason of the fact that such goods were procured from the Army and Navy Departments of the United States Government, a better quality merchandise at a substantial savings in price was obtainable from the respondent's stores. A substantial number of such members of the purchasing public have been induced, by virtue of such beliefs or impressions, to make purchases of and from the respondent.

PAR. 7. The use by the respondent of the words "Army" and "Navy" in connection with its corporate name, in its advertisements as above described, has the tendency and capacity to mislead and deceive members of the purchasing public into the false impressions and beliefs as set forth in paragraph 6 hereof.

PAR. 8. The use of the words "Army" and "Navy" by the respondents in its advertising as above set out unfairly diverts trade to it from its competitors who sell and offer to sell merchandise identical with the bulk of the inventory of the respondent, and procured from the same source, i. e., the ordinary marts of trade, but who do not make use of such misleading and deceptive practice, and has caused and now causes substantial injury to substantial competition within the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Mutual Stores, Inc., 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 entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 Robert S. Hall, an examiner of the Commission theretofore duly designated by it,

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in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Alden S. Bradley, counsel for the Commission, and by Alfred M. Schwartz, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that the 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, Mutual Stores, Inc., in connection with the conduct of its mercantile establishment within the District of Columbia, cease and desist from:

Using the words "Army and Navy," or either of them as descriptive of or with reference to any merchandise advertised and offered for sale or sold to the public, unless in fact the words "Army and Navy," or either of them, be used specifically in connection and conjunction with particular merchandise actually procured directly or indirectly, from the Army and Navy Departments of the United States Government.

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.

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IN THE MATTER OF

M. F. FOLEY COMPANY

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

Docket 2752. Complaint, Mar. 30, 1936—Decision, Mar. 25, 1937

Where a corporation engaged in sale and distribution at wholesale of fish and other sea food—

Advertised a certain species of fish offered and sold by it, in price lists or bulletins distributed among customers and prospective customers, as "Deep Sea Whitefish Fillets," or as "Fresh Cusk Fillets (Deep Sea Whitefish)," or as "Deep Sea Whitefish Fillets (Cusk)," or as "D. S. Whitefish Fillets," notwithstanding fact said species, or cusk, as known to trade, was not that fresh water, Great Lakes species referred to by trade and consuming public as "Lake Erie whitefish," "Lake Superior whitefish," and "Selkirk whitefish," and also "whitefish," and so advertised and sold and known to such trade and public, and preferred to said salt water species, on the part of a substantial portion of such and purchasing public;

With effect of misleading and deceiving customer and prospective customer members thereof into erroneous belief that said representations were true, and that its said product, thus represented, was the fresh water whitefish, and with result that a substantial number of such customers and prospective customers and purchasing public bought its said product in such belief, and trade was unfairly diverted to it from its competitors, who do not misrepresent the nature and kind of their respective products; all to the 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.

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

Mr. Daniel J. Murphy for the Commission.

Mr. Thomas H. Walsh, of Boston, Mass., 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 M. F. Foley Company, a corporation, hereinafter referred to as "respondent," has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the 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: