

Syllabus

IN THE MATTER OF
OLSON RUG COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2976. Complaint, Nov. 9, 1936—Decision, Apr. 21, 1937*

Where a corporation engaged in the manufacture, distribution, and sale of
rugs—

Represented and implied, through advertisements in periodicals of general
circulation, and through letters of solicitation, price lists, sample books,
pamphlets, folders, and other advertising literature, and through its cata-
logs and order blanks, that the rugs sold by it were made from the identical
materials sent in to it by each customer, together with other materials
furnished by it, such as new wool, through such statements, among others,
as “* * * you too will find it fascinating to send away a bundle of
your worn carpets, rugs, clothing, and other woollens and get back beautiful
deep piled rugs that will win the praise of your family and friends,”
“Strange but true, one may send old carpets, rugs, or clothing and have
them converted into new rugs of any color and design,” “By the magic
which turns your old wool into new rugs— * * *,” “* * * woven
from old wool which you collect and send in,” and “Please make the Olson
rugs as ordered below”;

Facts being that old materials sent in to it by customers are not segregated
and used in the manufacture of a rug to fill the specific order of the
particular customers, but are commingled with other materials sent in by
others and made into rugs to be carried in stock for sales to other pur-
chasers, and it fills orders sent in with old materials with rugs already
in stock and made from such materials previously sent in by other cus-
tomers, or with rugs woven to special order of customers from old materials
previously sent in by others, and does not make a practice of manufacturing
rugs sent to its respective purchasers from the specific materials sent in
by them;

With capacity and tendency to cause a portion of the purchasing public to
form the erroneous and mistaken impression and belief that when they sent
in old materials and ordered rugs from it said products would be made in
part from specific materials sent in, and to cause them to purchase its
said rugs on account of such belief, and with result that trade was thereby
diverted to it from competitors, including those who make, distribute, and
sell rugs made, in part at least, from specific materials sent in to them by
customers, and those who do not make the rugs sold to customers from such
materials sent in by the respective customers, but from other materials,
and who have not made use of any statements or representations calculated
to cause purchasers to form erroneous impression and belief that their
respective products are made from materials other than those from which
they are actually made; 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.

Complaint

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Mr. J. T. Welch for the Commission.

Kirkland, Fleming, Green, Martin & Ellis, 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 Olson Rug Company, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Olson Rug Company, is a corporation, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 2800 North Crawford Avenue, city of Chicago, State of Illinois. Respondent is now, and has been for a number of years, engaged in the business of manufacturing, distributing, and selling rugs, in commerce as herein set out.

PAR. 2. Respondent, being engaged in business as aforesaid, causes said rugs, when sold by it, to be transported from its office and principal place of business in the State of Illinois to the respective purchasers thereof located at various points in States of the United States other than the State of Illinois. For more than one year last past, the respondent has maintained a constant current of trade in the rugs manufactured, distributed, and sold by it, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been for many years, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling rugs, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing customers and prospective customers to purchase said rugs, respondent has, from time to time, caused advertisements to be inserted in newspapers, magazines, and periodicals of general circulation throughout the United States and has printed and circulated throughout the several States to said customers and prospective customers, through the United States mails and otherwise,

letters of solicitation, price-lists, sample books, pamphlets, folders, and other advertising literature, in which it has caused its corporate name, Olson Rug Company, to be prominently and conspicuously displayed, together with such statements as the following:

Send your materials just as they are. You may order any rug pictured in this book, regardless of the colors in your old materials. It does not matter whether the material you send is all old carpets or rugs or a part of it is clothing. Don't hesitate to send even badly worn materials. There is more good material in them than you can imagine.

I am sure you too will find it fascinating to send away a bundle of your worn carpets, rugs, clothing and other woollens and get back beautiful deep piled rugs that will win the praise of your family and friends.

Within a week, we will weave Olson rugs in any of the fashionable, new plain or two-tone colors, or exquisite oriental or early American patterns shown in this book regardless of the color of your materials.

Though all illustrations in this book are reproduced from actual color photographs by the finest printing process known, I guarantee that the rugs we make for you will be even richer in character.

In its catalogue, respondent has also made use of statements attributed to editorial writers for various magazines. Through the use of these statements in its catalogue, it vouches for the correctness of the statements claimed to have been made by such editors. These statements are as follows:

Strange but true, one may send old carpets, rugs or clothing and have them converted into new rugs of any color and design.

By the magic which turns your old wool into new rugs—this Persian type rug comes from the looms of the Olson Rug Company.

Think of being able to use your old carpets and materials to create a rug like this.

For it (the rug) is one of those amazing manufactured products woven from old wool which you collect and send in.

On its order blanks, is the following language:

Gentlemen: Please make the Olson rugs as ordered below.

All of said statements, together with other similar statements purport to be descriptive of respondent's business and the product manufactured and sold by it. In the various catalogues, circulars, and pamphlets distributed as aforesaid by the respondent, there appear numerous statements, including those hereinabove set out, wherein the respondent represents, either directly or through implication, that the rugs which it sells are made on the special order of the customer and are made from the identical materials sent in to it by each customer, together with other materials, such as new wool furnished by it.

PAR. 5. In truth and in fact, when old materials are sent in to the respondent by customers, these identical materials are not segre-

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gated and used in the manufacture of a rug to fill the specific order of said customer, but are commingled with other materials sent in by other customers and made into rugs to be carried in stock for sales to other purchasers. When customers send in old materials and order rugs to be made for them, the respondent supplies said customer with rugs already carried in stock which have been made from old materials previously sent in by other customers. The respondent does not make a practice of manufacturing the rugs which are sent to the respective purchasers from the specific materials sent in by said purchasers.

PAR. 6. Many of respondent's competitors, who manufacture, distribute, and sell rugs, truthfully represent the materials from which said rugs are made and when said competitors represent that the rugs sold by them will be made in part from the customers' own materials, they actually make said rugs in compliance with said representation.

PAR. 7. The false and misleading representations made by the respondent, as hereinabove set out, in the offering for sale and sale of its rugs were, and are, calculated to, and had, and now have, a capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that when they send in old materials and order rugs from the respondent, that said rugs will be made, in part, from the specific materials sent in, and into the purchase of respondent's rugs on account of the erroneous beliefs induced as aforesaid. As a result thereof, trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling rugs made from old materials, who truthfully advertise and represent the nature and character of their respective businesses and of their respective products. As a consequence 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 in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and constitute unfair methods of competition within the meaning and intent 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."

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 Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on November 9, 1936 issued and served its complaint in this proceeding upon respondent, Olson Rug Company, 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, Olson Rug Company, is a corporation, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 2800 North Crawford Avenue, city of Chicago, State of Illinois. Respondent is now, and has been for a number of years, engaged in the business of manufacturing, distributing, and selling rugs, in commerce as herein set out.

PAR. 2. Respondent, being engaged in business as aforesaid, causes said rugs, when sold by it, to be transported from its office and principal place of business in the State of Illinois to the respective purchasers thereof located at various points in States of the United States other than the State of Illinois. For more than one year last past, the respondent has maintained a constant current of trade in the rugs manufactured, distributed, and sold by it, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been for many years, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling rugs, in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 4. In the course of the operation of said business, and for the purpose of inducing customers and prospective customers to purchase said rugs, respondent has, from time to time, caused advertisements to be inserted in newspapers, magazines and periodicals of general circulation throughout the United States and has printed and circulated throughout the several States to said customers and prospective customers, through the United States mails and otherwise, letters of solicitation, price-lists, sample books, pamphlets, folders, and other advertising literature, in which it has caused its corporate name, Olson Rug Company, to be prominently and conspicuously displayed, together with such statements as the following:

I am sure you too will find it fascinating to send away a bundle of your worn carpets, rugs, clothing and other woolens and get back beautiful deep piled rugs that will win the praise of your family and friends.

Within a week, we will weave Olson rugs in any of the fashionable, new, plain or two-tone colors, or exquisite oriental or early American patterns shown in this book regardless of the color of your materials.

Though all illustrations in this book are reproduced from actual color photographs by the finest printing process known, I guarantee that the rugs we make for you will be even richer in character.

In its catalogue, respondent has also made use of statements attributed to editorial writers for various magazines. Through the use of these statements in its catalogue, it vouches for the correctness of the statements claimed to have been made by such editors. These statements are as follows:

Strange but true, one may send old carpets, rugs or clothing and have them converted into new rugs of any color and design.

By the magic which turns your old wool into new rugs—this Persian type rug comes from the looms of the Olson Rug Company.

Think of being able to use your old carpets and materials to create a rug like this.

For it (the rug) is one of those amazing manufactured products woven from old wool which you collect and send in.

On its order blanks, is the following language:

Gentlemen: Please make the Olson rugs as ordered below.

All of said statements, together with other similar statements, purport to be descriptive of respondent's business and the product manufactured and sold by it. In the various catalogues, circulars, and pamphlets distributed, as aforesaid, by the respondent, there appear statements, including those hereinabove set out, which have the capacity and tendency to cause a portion of the purchasing public to form the mistaken belief that the rugs which the respondent

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sells are made from the identical materials sent in to it by each customer together with other materials, such as new wool, furnished by it.

PAR. 5. When old materials are sent in to the respondent by customers, these identical materials are not segregated and used in the manufacture of a rug to fill the specific order of said customers but are commingled with other materials sent in by other customers and made into rugs to be carried in stock for sales to other purchasers. When customers send in old materials and order rugs to be made from them, the respondent either supplies said customers with rugs already carried in stock which have been made from old materials previously sent in by other customers, or with rugs woven to the special order of said customers from old materials previously sent in by other customers. The respondent does not make a practice of manufacturing the rugs which are sent to its respective purchasers from the specific materials sent in by said customers.

PAR. 6. There are among respondent's competitors those who manufacture, distribute, and sell rugs made, in part at least, from the specific materials which have been sent in to them by customers. There are also among respondent's competitors others who do not manufacture the rugs which they sell to their customers from the specific materials sent in by the respective customers but manufacture said rugs from other materials. The aforesaid competitors have not made use of any statements or representations that have the capacity and tendency to cause purchasers to form the erroneous impression and belief that their respective products are made from materials other than those from which they are actually made.

PAR. 7. The use by the respondent of the statements and representations hereinabove set out, in the offering for sale and sale of its rugs had, and now has, the capacity and tendency to cause a portion of the purchasing public to form the erroneous and mistaken impression and belief that when they send in old materials and order rugs from the respondent that said rugs will be made, in part, from the specific materials sent in, and to cause them to purchase respondent's rugs on account of such belief. As a result thereof, trade has been diverted to the respondent from those competitors likewise engaged in the business of selling and distributing rugs described in paragraph 6 hereof. As a consequence thereof, 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 in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondent, Olson Rug 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 and the answer filed herein on December 21, 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, Olson Rug Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of rugs in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or through implication, that said rugs will be made, in whole or in part, from the specific materials sent in to it by the respective customers ordering said rugs;

2. Using in its advertising, or in any other manner, language descriptive of its product which has the capacity and tendency to cause members of the purchasing public to form the impression or belief that in sending materials to the respondent and ordering rugs, they will receive rugs made, in whole or in part, from the identical materials sent in by each of them.

It is further ordered, That the respondent shall, within 90 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.

Syllabus

IN THE MATTER OF
PEDODYNE COMPANY, INC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3048. Complaint, Feb. 4, 1937—Decision, Apr. 21, 1937*

Where a corporation and three individuals, officers and owners thereof and directors and in control of its sales policies and business operations, engaged in the sale and distribution, under name "Pedodyne," of a product sold and recommended as a bunion treatment; in widely advertising their said product in newspapers and periodicals of general circulation throughout the States, and in advertising folders, literature, circular letters and other advertising matter printed and circulated throughout the several States to customers and prospective customers—

- (a) Represented that said product would penetrate beneath the outer skin and give permanent results, and would banish, cure, or heal bunions and give perfect foot comfort and end torture or misery thereof and soothe and heal the instant used, through such statements, among others, as "BUNION TORTURE needless. Pain stops almost instantly. * * *." " * * * penetrates to the tender, inflamed, diseased tissue," etc., "You want PERMANENT results. You want ENTIRE FREEDOM and complete foot comfort. You want to BANISH the misery for good," etc;
- (b) Represented that said "Pedodyne" was a scientific product and a recent discovery, or improvement of a scientific discovery, through such statements as "For many years the true nature of bunions was not understood. Now Science has conquered," and "PEDODYNE is Scientific"; and
- (c) Represented that competing products were of no value in treatment of bunions, through such statements as "Perhaps you have tried other methods—pads, plasters, appliances of one type or another—without satisfactory results. It is not surprising if you have failed to get the relief you sought," "How can you expect some little pad or appliance that does not penetrate beneath the outer skin to heal your bunion? I say that I do not believe that it can be done that way";

Facts being that, while product in question would, in numerous cases, temporarily relieve pain and torture caused from bunions and do so with reasonable promptness and, absent any bone deformity, aid in reducing the swelling and inflammation, it would not banish, cure or heal such ailments or conditions, but efficacy thereof was limited to temporary relief of pains and discomforts caused thereby, formula in question had been used for many years in treating such ailments and conditions and could not correctly be termed a recent discovery nor an improvement of a scientific discovery, product would not penetrate to the affected parts of the foot in cases of such conditions, and there were other products on the market sold and recommended for treatment of bunions, of which some were helpful in relieving pains caused thereby, and some in correction thereof; and

- (d) Represented to purchasing public, through circulars, letters, and literature issued and mailed to prospective purchasers, that they were making a "special offer" to particular person thus contacted, and that price quoted