

Complaint

IN THE MATTER OF

JULIUS GOODMAN & SON, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3028. Complaint, Jan. 5, 1937—Decision, Nov. 22, 1937

Where a corporation engaged, in retail jewelry business, in offer and sale, to customers and prospective customers in various States and in the District of Columbia, of new silverware and of secondhand silverware purchased by it from various sources and, in some instances, reconditioned and renovated at a cost which was generally lower than cost to it of new and unused silverware of similar quality, and enabled thereby to sell same at substantially lower prices than those at which competitors engaged in sale of new silverware were able to sell similar new products, and with appearance, in most instances, of new silverware which had never been used—
Sold its said used and renovated silverware with no mark, symbol or statement thereon or in connection therewith, or in the advertisements thereof to indicate same was not new, and without disclosing fact it had been previously used, then renovated and reconditioned, and under such circumstances as to indicate that it was new silverware, and failed, in its advertisements in newspapers and magazines in general circulation throughout the United States, to disclose secondhand or reconditioned nature of silverware thus offered by it;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into erroneous belief that said used and renovated silverware was new and unused, and with result that, by reason of such mistaken and erroneous belief induced by said advertisements and representations, number of the consuming public bought considerable volume of its said silverware and trade was unfairly diverted to it from those likewise engaged in sale of new and unused or used silverware, and who truthfully advertise 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.

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

Mr. George Foulkes for the Commission.

Mr. C. Rudolph Johnson, of Memphis, Tenn., 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 Julius Goodman & Son, Inc., is a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in

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commerce, as "commerce" is defined in said act of Congress, 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, Julius Goodman & Son, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 43 South Main Street, Memphis, Tennessee. Respondent is now, and for more than two years last past has been, engaged in the retail jewelry business and in the sale and offering for sale of new and used silver tableware to customers and prospective customers located in various States of the United States.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes and has caused said tableware, when sold, to be transported from its office and principal place of business in the State of Tennessee to purchasers thereof located in various other States of the United States. There is now, and has been during the time hereinabove mentioned, a constant current of trade and commerce in said new and used silver tableware so distributed and sold by respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business said respondent was, and is in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of new and used silver tableware, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, respondent, for more than two years last past has bought and still buys, second-hand, old, and used silver tableware, which it has caused and now causes to be renovated and reconditioned. Respondent has caused advertisements to be inserted in newspapers and magazines having a general circulation throughout the United States in which it has represented and now represents that said old second-hand and used silver tableware is new and unused.

Certain advertising matter used by said respondent in making said representation is herein set out as illustrative of said representation, but is not all inclusive. Such advertisements are as follows:

\$350.00 Sterling Silver French Border Coffee Service
Present regular price \$700.00
Our Price \$350.00
\$350.00

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Sterling silver French Border Coffee Service. Present regular price \$700.00. Our price \$350.00. Will send on approval.

We have in stock a number of pieces of this well known silver, such as compotes, baskets, vases, and centerpieces priced on the same basis as the coffee service.

The above is only one of the many tea and coffee services we have in our stock of unusual silver which is one of the largest in the United States.

We also offer an unusual opportunity to fill in on your flat silver patterns, such as,

Cambridge	Pompadour	Orange Blossom
Louis XV	Bridal Rose	Norfolk
Lily	Versailles	Buttercup
Luxembourg	Violet	Strasbourg
Canterbury	Old English	Chantilly
Frontenac	Lancaster	Chrysanthemum

We have in stock the above and many others.

Said silver tableware so advertised and sold by respondent has the appearance of new tableware, which has never been used, and it is sold by respondent without disclosing the fact that it had been previously used, then renovated and reconditioned, and is sold under such circumstances to indicate that it is new tableware. Respondent has sold, and now sells said tableware without any marking, symbol, or statement on or about it, or in the advertisements describing the same, indicating that it is not new silver tableware.

The cost to respondent of obtaining, renovating and reconditioning said tableware is much less than the cost to tableware manufacturers of manufacturing and selling new tableware of similar quality, and respondent is thereby able to sell its said products at substantially lower prices than manufacturers of new tableware can sell their products of the same or similar quality.

PAR. 4. It is the common belief and understanding of the purchasing public that silver tableware, having the appearance of new and unused tableware, is in fact tableware which is new and unused. The purchasing public, when buying silver tableware having the appearance of being new and unused and without any marking, symbol, or statement on or about said tableware, or the advertisements describing the same, clearly indicating that said tableware is not in fact new or unused, are entitled to receive new tableware and not second-hand, old, and used tableware which has been renovated and made over.

PAR. 5. The acts and practices of respondent in offering for sale and selling said second-hand silver tableware had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the purchase of said second-hand, old and used silver tableware which has been renovated and made over by

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respondent, in the erroneous belief that they are purchasing new and unused silver tableware. Said acts and practices of respondent have had, and do have the tendency and capacity to induce prospective customers to answer respondent's advertisements and to purchase respondent's silver tableware, and unfairly to divert trade to respondents from competitors engaged in the sale of new and used silver tableware, and who truthfully advertise their products. Further, as a direct consequence of the misleading and erroneous belief induced by the advertisements and misrepresentation of the respondent, as hereinabove enumerated, a number of the consuming public purchased a substantial volume of respondent's reconditioned silver tableware with the result that trade has been unfairly diverted to respondent from corporations, firms, partnerships, and individuals likewise engaged in the business of selling new and used silver tableware, and who truthfully advertise their products. As a result thereof, substantial injury has been done, and is now being done by respondent, to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of respondent have been, and are, all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate 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."

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 January 5, 1937, issued and served its complaint in this proceeding upon respondent, Julius Goodman & Son, 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before Robert S. Hall, examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Rudolph Johnson, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission.

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Thereafter, the proceeding came on for final hearing before the Commission on the said complaint and answer thereto, testimony and other evidence, and brief in support of the allegations of the complaint, no brief having been filed by respondent and oral argument having not been requested, 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, Julius Goodman & Son, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 43 South Main Street, Memphis, Tenn.

Respondent is now, and for approximately five years last past has been, engaged, under its present corporate name, in the retail jewelry business and in offering for sale and selling new and used silverware to customers and prospective customers located in various States of the United States and in the District of Columbia.

The business is under the control of Julius Goodman and has been in existence since the year 1865. Respondent's gross dollar volume of business for the year 1936 was approximately \$250,000.

PAR. 2. Respondent's merchandise is sold throughout the United States and in many foreign countries. When orders are received for respondent's merchandise, it is shipped from respondent's place of business in Memphis, Tenn., to the purchasers thereof at their respective locations, some of which are in States of the United States other than the State of Tennessee, and some of which are in foreign countries.

There is now and has been during the time hereinabove mentioned a constant current of trade and commerce in said new and used silverware so distributed and sold by respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business respondent was, and is, in substantial competition with other corporations and with partnerships and individuals likewise engaged in the sale and distribution of new and used silverware in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's silverware consists of new and unused silver and second-hand or used silverware which respondent purchases from various sources.

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In some instances respondent reconditions and renovates the used silverware and offers it for sale to the purchasing public.

In the course of the operation of its business, respondent has caused advertisements to be inserted in newspapers and magazines having a general circulation throughout the United States in which advertisements the fact that said silverware was second-hand or reconditioned was not disclosed. The following advertisement is illustrative of said representations but is not all inclusive:

(Picture of Silver Spoons)

UNUSUAL OPPORTUNITY

Is offered you to match your obsolete, inactive and older patterns of silver flatware at reasonable prices.

Baronial	Georgian	Norfolk
Bridal Rose	King Edward	Old English
Buttercup	Lancaster	Paul Revere
Canterbury	Les Cinq Fleurs	Rosalind
Chrysanthemum	Lily	Versailles
Colonial	Louis XV	Violet
Frontenac	Luxembourg	

We have accumulated a stock of the above and many others. We also carry one of the largest stocks of unusual silver shown in the United States.

Silver sent on approval

JULIUS GOODMAN & SON, INC.

43 South Main Street

Memphis

Tennessee

(Picture of Silver Service Set)

\$975.00

8-piece sterling silver service Chantilly Pattern made by Gorham Co. Original cost approximately \$2025.00. In perfect condition. Will send on approval.

This is only one of the many Tea Services and values from our stock of fine and unusual silver which is one of the largest in the United States.

We also offer an unusual opportunity to fill in on your flat silver patterns, such as,

Cambridge	Pompadour	Orange Blossom
Louis XV	Bridal Rose	Norfolk
Lily	Versailles	Buttercup
Luxembourg	Violet	Strasbourg
Canterbury	Old English	Chantilly
Frontenac	Lancaster	Chrysanthemum

We have in stock the above and many others. Correspondence solicited.

JULIUS GOODMAN & SON, INC.

43 South Main Street,

Memphis, Tennessee.

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Respondent's silverware so advertised and sold as aforesaid had the appearance, in most instances, of new silverware which had never been used.

Respondent has sold said used and renovated silverware without disclosing the fact that it has been previously used, then renovated and reconditioned, and under such circumstances as to indicate that it was new silverware.

In some instances prospective customers made inquiry as to whether or not respondent's silverware was new or used merchandise, and were advised by respondent that the silverware was used and reconditioned silverware, if such was the case.

Respondent has in the past sold its used and renovated silverware without any marking, symbol, or statement on or about it or in its advertisements indicating that such silverware was not new silverware.

On or about December 4, 1936, respondent changed its advertising policy and in all its advertisements subsequent to December 4, 1936, respondent represented, or otherwise indicated that its old reconditioned silverware was, in fact, silverware that had been previously used then reconditioned.

PAR. 4. The cost to respondent of obtaining, renovating and reconditioning said silverware is generally lower than the cost to respondent of new and unused silverware of similar quality, and respondent is thereby able to sell its said products at substantially lower prices than competitors engaged in the sale of new silverware can sell similar new silverware.

When buying silverware having the appearance of new and unused silverware and without any marking, symbol, or statement on or about said silverware, or in the advertisements describing the same, clearly indicating that said silverware is not, in fact, new or unused, the purchasing public believes, and is entitled to believe, that such silverware is new silverware and not second-hand, old, and used silverware which has been renovated and made over.

PAR. 5. Respondent's misrepresentation concerning its silverware as hereinabove set forth in its advertising in newspapers, pamphlets, and other advertising literature had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said used and renovated silverware was new and unused silverware.

As a direct result of this mistaken and erroneous belief induced by advertisements and misrepresentations of respondent, as hereinabove enumerated, a number of the consuming public purchased a considerable volume of respondent's silverware with the result that trade

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has been unfairly diverted to respondent from corporations and partnerships and individuals likewise engaged in the business of selling new and unused, or used, silverware and who truthfully advertise their products.

As a result thereof substantial injury has been done, 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Julius Goodman & Son, 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, the answer of respondent, testimony and other evidence, taken by Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief of counsel for the Commission, no brief having been filed by respondent and oral argument having not been requested, 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, Julius Goodman & Son, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of used, old, and reconditioned silverware in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

Representing directly, or through failure to disclose the true nature, character, and condition thereof, that said old, used, and reconditioned silverware is new.

It is further ordered, That the respondent shall within 30 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

BLOOMINGDALE BROTHERS, INC.

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

Docket 3176. Complaint, July 17, 1937—Decision, Nov. 22, 1937

Where corporate department store operator, engaged in sale and distribution of women's wearing apparel and other allied products, to purchasers in other States, in substantial competition with those engaged in sale and distribution of such apparel and products in various States and in District of Columbia; in advertising its said merchandise in newspapers of interstate circulation—

Represented, designated, and referred to certain dresses as "Windsor Crepe" and certain blouses as "Helm Crepe," notwithstanding fact garments thus advertised and offered were not composed of silk, product of cocoon of silkworm, as long definitely understood in mind of consuming public from word "silk," and were not products thereof, long and still held in great public esteem and confidence for their preeminent qualities, nor silk as understood from word "Crepe," without descriptive qualification, as applied to wearing apparel, as meaning one of terms applied to fabrics resulting from different types of weaving of silk fiber, and as meaning fabric made from cocoon of silkworm, and, as commonly known and understood by public generally, "silk";

With capacity and tendency to mislead portion of purchasing public into erroneous belief that such articles were made of silk, and to cause them to purchase same on account of such erroneous beliefs, and to divert trade unfairly to it from competitors; 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. Astor Hogg for the Commission.

Proskauer, Rose & Pashus, 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 Bloomingdale Brothers, Inc., 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