

Syllabus

IN THE MATTER OF

HARRY WEINBERG, TRADING AS NU-ART TAILORING
COMPANY

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

Docket 3256. Complaint, Oct. 30, 1937—Decision, Jan. 5, 1938

Where an individual engaged in offer and sale of men's clothing through traveling salesmen or agents, whom he equipped with order blanks for taking measurements of each purchaser and with samples of materials for purchasers' selection as to color, weave, and quality, and who recorded such selections, along with purchasers' measurements on aforesaid blanks and forwarded orders, and were compensated by deposit required of purchaser at such time, and, as thus engaged, in substantial competition with others likewise engaged in selling and distributing men's clothing in interstate commerce, and with many who likewise sell their clothing through salesmen or agents and have not adopted the below described acts, practices, and methods—

- (a) Represented and implied to prospective purchasers that he would make for and deliver to them made-to-measure or tailor-made garments and garments made from material of the color, weave and quality selected by them from the samples exhibited by his said salesmen or agents, facts being garments delivered, in many cases, were not tailor-made, as understood by purchasing public, but "ready-made" or "hand-me-down" clothes previously made without regard to individual measurements of purchaser to whom they were eventually sold, garments, in some instances in which in fact made to individual measurements of purchaser, did not fit in same manner as made-to-measure or tailor-made garments, or at all, or with any reasonable relation to individual to whom they were delivered, due to lack of experience and skill on part of salesman or agent in making and taking measurements, etc., or lack of skill on part of workman making the clothing, and, in many instances, were so cut and constructed that it was not possible for expert tailors to alter them so as to fit the purchaser, and, in many instances, garments were made from material which was different in color and weave from, and substantially inferior in quality to, material selected by customer;
- (b) Represented, from time to time, to prospective purchasers, that delivery of the garment ordered would be made to purchaser by one of his salesmen or agents in person, so as to afford former opportunity to inspect the same as to material from which made and as to its fit prior to paying balance of purchase money due, and, in many instances, that well-known men in purchaser's community had bought clothing from him and that they were satisfied therewith and had indorsed the same, facts being that, in practically every instance, garment was shipped to purchaser by express, cash on delivery for balance of purchase money, with no inspection permitted and with no opportunity to inspect clothing prior to payment of such balance, and representation as to purchases by well-known men in particular customer's community were false;

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- (c) Represented, in many instances, that he contemplated opening a local store and that only a limited number of suits were being sold in the vicinity at greatly reduced prices for introductory and advertising purposes, and that no additional charge would be made for shipping, and that price paid included extra pair of trousers, and customer would be extended privilege of making payment for garment ordered on installment plan, facts being such various representations as above set forth, as variously made from time to time, were each and all false; and
- (d) Failed and refused to deliver to purchasers making complaint to him by reason of garments' failure to fit or his failure to make same from material selected by purchaser, or for any other reason, garment that would fit, made from material selected, and refused to return to purchaser entire amount of purchase price paid;

With effect of misleading and deceiving many purchasers and causing them erroneously to believe that garments sold by him were made-to-measure or tailor-made clothing, as understood by purchasing public, and that they would be made from materials selected by purchaser from samples submitted by salesmen or agents, and be delivered by person taking order, with inspection permitted prior to payment of balance, and that other representations above set out were true, and that promises made by him would be fulfilled, and of thereby giving him an unfair advantage over his competitors through causing many prospective purchasers to buy clothing from him in interstate commerce, in preference to purchasing same from competitors who have not resorted to such acts and practices; to their substantial injury and that of public:

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

Mr. Joseph C. Fehr 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 Harry Weinberg, trading and doing business under the name Nu-Art Tailoring Company, 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 Harry Weinberg is an individual 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 has his office and principal place of business at 818 Broadway, New York, N. Y.

Respondent causes his said clothing, when sold, to be transported from his said place of business in the city of New York, N. Y., 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 New York, and in the District of Columbia.

Respondent, in the course and conduct of his business in said commerce, as aforesaid, is in substantial competition with other individuals and with corporations, associations, and partnerships 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 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 his clothing as hereinafter alleged.

PAR. 2. Respondent, in the course and conduct of his business, as aforesaid, employs approximately twenty salesmen or agents located at various points in the United States to solicit and accept orders for his 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 garment ordered is to be made. The prices at which said clothing is sold vary according to the quality of the material selected, and the said salesmen or agents collect from the purchasers of said clothing a substantial part of the agreed purchase price at the time that 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 one of said order blanks and forwards the same to the respondent at his said place of business in New York, N. Y., 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

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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 regarding the weight, height, general build, and appearance, etc., of the person measured. 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 his business, and by the means and in the manner aforesaid, represents and implies to prospective purchasers of his said clothing that he will make for, and deliver to, purchasers of his 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 his 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 hereinabove set out, but are "ready-made" or "hand-me-down" garments having been previously manufactured without regard to the individual measurements of the purchaser to whom the garment is eventually sold. In some instances the garments are made to the individual measurements of the purchaser but, because of the lack of experience and skill on the part of the salesmen or agents of respondent in making and taking measurements and securing accurate information regarding the weight, height, general build, and appearance, etc., of the purchasers or because of the lack of skill on the part of the workmen making the garments, the garments delivered do not fit in the same manner as 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.

PAR. 5. Respondent, in the course and conduct of his business, as aforesaid, represents to purchasers of his said clothing that he 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 said salesmen or agents by the respondent and by said salesmen or agents exhibited to said purchasers.

In truth and fact, in many instances, 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 he

has substituted for the material selected by the purchaser and which is different in color and weave from, and substantially inferior in quality to, the material selected by the customer.

PAR. 6. Respondent, in the course and conduct of his business, as aforesaid, in many instances, represents to prospective purchasers that delivery of the garment ordered will be made to the purchaser by the salesman or agent in person so as to afford such purchaser an opportunity to inspect the garment ordered as to the material from which made and as to its fit prior to the time that payment is made of the balance of the purchase money due the respondent. In truth and in fact, the garment, in practically every instance, is shipped to the purchaser by express, cash on delivery for the balance of the purchase money, with no inspection permitted, and the purchaser does not have an opportunity to inspect the garment prior to the payment of the balance of the purchase price due.

PAR. 7. In many instances, the representation is made to prospective purchasers that well-known men in the purchaser's community have purchased garments from the respondent and they are satisfied and have endorsed said clothing, when such is not a fact. In many instances, the representation is made that the respondent contemplates the opening of a local store and that only a limited number of suits are being sold in the vicinity at greatly reduced prices for introductory and advertising purposes, when such is not a fact. In many instances, the representation is made that no additional charge will be made for shipping, when such is not a fact. In many instances, it is represented that the price paid for the suit includes an extra pair of trousers, when such is not a fact. In many instances, respondent represents that the customer will be extended the privilege of making payment for the garment ordered on the instalment plan, when such is not a fact.

PAR. 8. When complaint is made to the respondent by a purchaser because of the failure of the garment to fit, or because respondent failed to make the garment from the material selected by the purchaser, or for any other reason, the respondent fails and refuses to deliver to such purchaser a garment that will fit made from the material selected and refuses to return to the purchaser the entire amount of the purchase price paid.

PAR. 9. 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 material selected

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by the purchaser from samples submitted by the salesmen or agents, 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, and that the other representations hereinabove set out are true, and that the promises made by the respondent will be fulfilled. 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 his competitors who do not use the acts, practices, and methods used by the respondent, hereinabove alleged, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 10. The above alleged acts, practices, and methods of the respondent are all to the injury and 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 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 30, 1937, issued, and on November 1, 1937, served, its complaint in this proceeding upon respondent Harry Weinberg, trading and doing business under the name Nu-Art Tailoring Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and after the expiration of the time within which respondent's answer thereto was due to be filed, the Commission, by order entered herein, ordered that respondent's time for filing answer be extended to December 31, 1937, and that respondent's answer, dated December 4, 1937, be filed herein, admitting all the material allegations of the complaint to be true, waiving the taking of further evidence, and all other intervening procedure, which said 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 answer thereto, 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 Harry Weinberg is an individual 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. His office and principal place of business is located at 818 Broadway, New York, N. Y. Respondent has been trading and doing business under the name Nu-Art Tailoring Company.

Respondent in the usual course of such business has constantly engaged in interstate commerce, selling and shipping such clothing from his place of business in New York, N. Y., to purchasers located in various other States of the United States.

In the operation of his business as aforesaid, respondent comes into substantial competition with others engaged in selling and distributing men's clothing in interstate commerce. Among such competitors are many who likewise sell their clothing through salesmen or agents, and who have not adopted the acts, practices, and methods in the sale thereof used by the respondent in the sale of his clothing as hereinafter described.

PAR. 2. Respondent employs approximately twenty salesmen or agents located at various points in the United States to solicit and accept orders for his clothing. By means of advertisements published in various newspapers, particularly in the Western sections of the United States, respondent contacts men who have had experience in selling men's clothing by way of door-to-door canvassing. For their services, respondent's salesmen receive a commission for each sale, the amount of which is determined by the quality of the merchandise which they sell. When a salesman makes a sale, he receives a deposit from the customer giving the order, and this deposit is retained by him. Respondent equips each salesman or agent with order blanks, and with samples of materials from which the purchasers make selections as to color, weave, and quality of the material from which the garment ordered is to be made. The order blanks contain spaces for the taking of individual measurements of each purchaser.

The prices at which respondent sells his clothing vary according to the quality of the material selected, and each salesman, or agent, collects from the purchaser of said clothing a substantial part of the agreed purchase price at the time that the order is accepted, with the understanding that 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 the 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 one of the aforesaid order blanks and forwards the same to the respondent at his place of business in New York City, N. Y. The purchaser assumes, and has a right to assume, that the garment ordered by him will be made from the material and according to the measurements determined upon between himself and the salesman who took his order.

PAR. 3. Made-to-measure or tailor-made clothing is understood by the trade and purchasing public generally to mean, and to be, 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 regarding the weight, height, general build, and appearance, etc., of the person measured. 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 is 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 his clothing that he will make for, and deliver to, purchasers of his 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 his salesmen or agents. 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, but are "ready-made" or "hand-me-down" garments, having been previously manufactured without regard to the individual measurements of the purchaser to whom the garment is eventually sold. In some instances the garments are made to the individual measurements of the purchaser, but, because of the lack of experience and skill on the part of the salesmen or agents of respondent in making and taking measurements and securing accurate information regarding the weight, height, general build and appearance, etc., of the purchasers, or because of the lack of skill on the part of the workmen making the

clothing, the garments delivered do not fit in the same manner as 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 to alter them to make them fit the purchaser.

PAR. 5. Respondent represents to purchasers of his clothing that he will make for, and deliver to, them garments made from materials of the color, weave, and quality selected by such purchasers from the samples that respondent furnishes to said salesmen or agents, and as exhibited to purchasers by respondent's salesmen or agents.

In many instances 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 he has substituted for the material selected by the purchaser, and which is different in color and weave from, and substantially inferior in quality to, the material selected by the customer.

PAR. 6. Respondent has from time to time represented to prospective purchasers that delivery of the garment ordered will be made to the purchaser by one of his salesmen, or agents, in person so as to afford such purchaser an opportunity to inspect the garment ordered as to the material from which made, and as to its fit, prior to the time that payment is made of the balance of the purchase money due the respondent. In practically every instance the garment is shipped to the purchaser by express, cash on delivery for the balance of the purchase money, with no inspection permitted, and the purchaser does not have an opportunity to inspect the garment prior to the payment of the balance of the purchase price due.

PAR. 7. Respondent, in many instances, represents to prospective purchasers that well-known men in the purchaser's community have purchased garments from the respondent, and that they are satisfied and have endorsed said clothing, when such is not a fact. In many instances the representation is made that the respondent contemplates the opening of a local store, and that only a limited number of suits are being sold in the vicinity at greatly reduced prices for introductory and advertising purposes, when such is not a fact. In many instances the representation is made that no additional charge will be made for shipping, when such is not a fact. In many instances it is represented that the price paid for the suit includes an extra pair of trousers, when such is not a fact. In many instances, respondent represents that the customer will be extended the privilege of making payment for the garment ordered on the installment plan, when such is not a fact.

PAR. 8. When complaint is made to the respondent by a purchaser because of the failure of the garment to fit, or because respondent failed to make the garment from the material selected by the purchaser, or for any other reason, the respondent fails and refuses to deliver to such purchaser a garment that will fit made from the material selected, and refuses to return to the purchaser the entire amount of the purchase price paid.

PAR. 9. 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 material selected by the purchaser from samples submitted by the salesmen or agents, 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, and that the other representations hereinabove set out are true, and that the promises made by the respondent will be fulfilled. Said acts, practices, and methods have the capacity and tendency to, and do, give the respondent an unfair advantage over his competitors, in that they cause many prospective purchasers to purchase clothing from the respondent in interstate commerce, in preference to purchasing such clothing from his competitors, who have not resorted to such acts and practices, to the substantial injury of said competitors in said commerce and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent Harry Weinberg, trading and doing business under the name Nu-Art Tailoring 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 31, 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 con-

clusion 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 Harry Weinberg, an individual trading and doing business under the name Nu-Art Tailoring Company, or under any other name or style, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of men's clothing in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

Representing in newspapers and magazines, and through circulars, catalogs, labels, or in any other form of printed matter, or in any other way:

1. That the men's clothing sold by him is made-to-measure or tailor-made, unless and until his garments are actually cut and made to the individual measurements of the person for whom intended;

2. That the garments sold by him will be made from the material selected by the purchaser from samples submitted by his salesmen or agents, and will be delivered by the person taking the order, unless and until the garments sold by him are actually so made and delivered;

3. That purchasers of his men's clothing will be permitted to inspect the articles of clothing purchased by them prior to the payment by them of the balance due, when in fact orders are shipped c. o. d. with no inspection permitted;

4. That well-known men in the various communities where he sells his clothing have purchased garments from him, and that they are satisfied and have endorsed them, when such is not the fact;

5. That he contemplates opening a local store in the various communities where his garments are sold and purchased, when in fact he has no such intention;

6. That no additional charge will be made for shipping when such extra charge therefor is made;

7. That the price paid for one of his suits includes an extra pair of trousers, when no such extra pair of trousers is included in the price of one suit;

8. That the purchaser of his clothing will be extended the privilege of paying for it on the installment plan, when such privilege is not actually given.

And it is hereby, further ordered, That the said respondent shall within 60 days from the date of service upon him of this order file with this Commission a report, in writing, setting forth the manner and form in which it shall have complied with this order.

IN THE MATTER OF
BELMONT LABORATORIES, INC.

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

Docket 2869. Complaint, June 30, 1936—Decision, Jan. 6, 1938

Where a corporation engaged in the manufacture of its "Mazon" proprietary preparation or unction for various skin ailments and disorders, and in sale and distribution thereof, and of its "Mazon Soap" as auxiliary product and adjunct thereto, to and through wholesale druggists in the various other States, for resale through drug stores, indiscriminately, to purchasers who attempt self-medication without proper and necessary advice as to their condition and proper treatment therefor, and with no clinic maintained by it wherein purchasers of its products were afforded opportunity for medical examination and with no physician connected with its said business, and, as thus engaged, in substantial competition with others engaged in sale and distribution, or in manufacture, sale, and distribution, in commerce among the several States and in the District of Columbia, of preparations designed and sold as cures and remedies, or as treatments for various similar ailments and disorders of the skin—

- (a) Represented, in advertisements of its said products in medical and nursing journals, through circulars mailed to physicians throughout the country, and through leaflets included in each package of aforesaid product and depicting photographs purportedly showing cures of aggravated cases of eczema and psoriasis, and through copies of purported medical indorsements, and other advertising matter relating to efficacy of product in question, that such product was a competent remedy or cure for eczema, acne, dandruff, alopecia, and other disorders and ailments manifested by diseased conditions of the skin, and had been clinically proved to eliminate permanently such various disorders and ailments;
- (b) Represented, as aforesaid, that said "Mazon" was a competent remedy or cure for all forms of athlete's foot and other skin disorders of similar nature, irrespective of type of disorder or cause or condition thereof, and had been clinically proved to eliminate permanently all types of such aforesaid disorders; and
- (c) Represented that aforesaid product was used exclusively by well-known specialists in the treatment of various skin disorders, and that physicians throughout the country had successfully prescribed said product permanently to eliminate or cure ailments, disorders and diseased conditions of the skin, irrespective of type of particular disorder or cause or condition thereof;

Facts being that some diseased conditions of skin, especially those caused by systemic or metabolic disorder, are often of serious nature and, in such disease as syphilis, usually manifested by skin disorder, sometimes prove fatal if neglected or improperly treated, such skin diseases as eczema,