

IN THE MATTER OF
SAMUEL STECKENBERG AND ABRAHAM M. FYNKE,
TRADING AS COLONIAL RIBBON MILLS

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

Docket 2921. Complaint, Sept. 16, 1936—Decision, Jan. 19, 1938

Where two partners engaged, as selling agents or jobbers in concept of trade and industry involved, in distribution of ribbons and narrow fabrics of silk and rayon, made for and bought by them from mills under arrangements whereby mills allocated number of looms and employees thereat for manufacture into finished products of material sent by partners from time to time, and in accordance with instructions, and were compensated on basis of cost of manufacture and incidental overhead for looms' maintenance and operation, and in sale of such material, made for and bought by them, as above set forth, to manufacturers of handkerchiefs, ladies' and children's underwear, greeting cards, dolls, candies, toys, and novelties—
Made use of and featured trade name including word "Mills" in cards, invoices, letterheads, and other business stationery printed and circulated throughout the various States to customers and prospective customers, and thereby represented to aforesaid customers and general buying public that they owned, operated, or controlled a mill in which said ribbons and narrow fabrics were by them manufactured, notwithstanding fact looms and employees above referred to, under aforesaid arrangement, were not operated, supervised, or controlled by them, but by the respective owners thereof, and they neither owned and operated nor controlled any manufacturing plant or mill and did not make aforesaid products, sold by them, and owned no interest in aforesaid two manufacturers thereof, and were not manufacturers, as understood by trade and purchasing public generally;
With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that aforesaid representations were true and that they were actually manufacturers of products sold by them, and with result that number of consuming public, as direct consequence of mistaken and erroneous belief so induced, purchased substantial volume of their said ribbons and narrow fabrics, and trade was unfairly diverted to them from their competitors likewise engaged in distribution and sale of such products and who truthfully advertise and represent the nature and character of their business; 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. Miles J. Furnas* and *Mr. John W. Addison*, trial examiners.

Mr. J. T. Welch and *Mr. Joseph C. Fehr* for the Commission.

Mr. Gustave A. Steckenberg, of New York City, for respondents.

Complaint

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 Samuel Steckenberg and Abraham M. Fynke, partners, trading as Colonial Ribbon Mills, hereinafter referred to as respondents, have been and now are 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. Respondents, Samuel Steckenberg and Abraham M. Fynke, are trading and doing business under the trade name and style of Colonial Ribbon Mills with their office and principal place of business located at 95 Madison Avenue, in the city of New York, State of New York. Respondents are now, and have been since 1932, engaged in the business of distributing and selling, in commerce as herein set out, ribbons and narrow fabrics made of silk, satin, taffeta and rayon to manufacturers of handkerchiefs, ladies' and children's underwear, greeting cards, dolls, candies, and toys and novelties.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said ribbons and narrow fabrics, when sold, to be transported from their office and principal place of business in the State of New York to the respective purchasers thereof located at various points in the States of the United States other than the State of New York. Respondents have at all times maintained a constant current of trade in said ribbons and narrow fabrics, sold, and distributed by them, 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 their business respondents are now, and have been since 1932, in substantial competition with other firms and with individuals and corporations likewise engaged in the business of distributing and selling ribbons and narrow fabrics 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 individuals, firms, and corporations to purchase the ribbons and narrow fabrics sold by them, respondents have caused cards, invoices, letterheads, and other business stationery to be printed and circulated throughout the various States of the United

States to customers and prospective customers. In all of said cards, invoices, letterheads, and other business literature, respondents have caused their firm name "Colonial Ribbon Mills" to be prominently and conspicuously displayed.

The use of the word "Mills" in their firm name serves as a representation to the respondents' customers, prospective customers, and the general buying public that the respondents own, operate, or control a mill wherein ribbons and narrow fabrics are manufactured.

PAR. 5. Respondents do not, in fact, own, operate, or control any mill or mills for the manufacture of ribbons and narrow fabrics from raw materials. Respondents are not engaged in the business of manufacturing and are not manufacturers as those terms are understood by the trade and the purchasing public generally, but are engaged solely in the business of distributing and selling ribbons and narrow fabrics manufactured from raw products by others.

PAR. 6. A substantial portion of the wholesale and retail purchasers of ribbons and narrow fabrics have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality, and other advantages in dealing direct with the manufacturer rather than a selling agency or middleman or anyone else.

PAR. 7. Many of the respondents' competitors who distribute and sell ribbons and narrow fabrics do not manufacture products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 8. The false and misleading representation made by the respondents in designating themselves, through the use of their firm name "Colonial Ribbon Mills," as manufacturers of the products which they distribute and sell was, and is, calculated to, and had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representation is true and that the respondents are actually manufacturers of the products which they sell. As a direct consequence of the mistaken and erroneous beliefs, induced as aforesaid, a number of the consuming public have purchased a substantial volume of ribbons and narrow fabrics sold by the respondents with the result that trade has been unfairly diverted to the respondents from their competitors likewise engaged in the business of distributing and selling ribbons and narrow fabrics who truthfully advertise and represent the nature and character of their business. As a result thereof, substantial injury has been, and is now being, done by respondents to competition in commerce among and between the various states of the United States and in the District of Columbia.

PAR. 9. The above and foregoing acts, practices, and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, 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 Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on September 16, 1936, issued, and on September 18, 1936, served, its complaint in this proceeding upon respondents, Samuel Steckenberg and Abraham M. Fynke, partners, trading as Colonial Ribbon Mills, charging them 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, before Miles J. Furnas and John W. Addison, examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Gustave A. Steckenberg, attorney for the respondent; and said testimony and other evidence were 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, and answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto (oral argument having been waived by respondents); 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. Respondents, Samuel Steckenberg and Abraham M. Fynke, are trading and doing business under the trade name and style of Colonial Ribbon Mills. Their office and principal place of business is located at 95 Madison Avenue, New York City, N. Y. Respondents engage three employees. Ever since starting in busi-

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ness together in 1932, respondents have been engaged in the business of distributing and selling ribbons and narrow fabrics made of silk and of rayon to manufacturers of handkerchiefs, ladies' and children's underwear, greeting cards, dolls, candies and toys, and novelties.

PAR. 2. In the operation of their business, as aforesaid, respondents have at all times maintained a course of trade in said ribbons and narrow fabrics thus sold and distributed by them, and have caused a substantial part of said ribbons and narrow fabrics, when sold, to be transported from their office and place of business in New York City, N. Y., to purchasers thereof at various points in other States of the United States. Ever since the year 1932, respondents have been in substantial competition with other individuals, partnerships, firms, and corporations engaged in selling and distributing ribbons and narrow fabrics in commerce among and between the various States of the United States.

PAR. 3. In the course of the operation of said business, as aforesaid, and for the purpose of inducing individuals, partnerships, firms, and corporations to purchase the ribbons and narrow fabrics sold by them, respondents have caused cards, invoices, letterheads, and other business stationery to be printed and circulated throughout the various States of the United States to customers and prospective customers. In all of said cards, invoices, letterheads, and other business literature, respondents have caused their firm name "Colonial Ribbon Mills" to be prominently and conspicuously displayed.

The use of the word "Mills" in their firm name serves, and has served, as a representation to the respondents' customers, prospective customers, and the general buying public that the respondents own, operate, or control a mill wherein said ribbons and narrow fabrics are manufactured by them.

PAR. 4. Respondents do not actually own and operate, or control, any manufacturing plant or mill, and do not make the ribbons and narrow fabrics sold by them. The ribbons sold by respondents are made for respondents by the Rose Ribbon Mills, Inc., of East Stroudsburg, Pa., and the Champin Ribbon Mills of Paterson, N. J. Respondents own no interest in either of said manufacturers.

PAR. 5. Respondents have a written arrangement with the Rose Ribbon Mills, Inc., called a lease, whereby the Rose Ribbon Mills, Inc., allocates five of its looms, and the workers at said looms, to the manufacture into finished products of the material that respondents send to said factory or mill from time to time. By this arrangement, respondents agree to pay said Rose Ribbon Mills,

Inc., the cost of manufacture and incidental overhead expenses necessary for the maintenance and operation of said five looms. The said five looms are at no time operated, supervised, or controlled by respondents. They are at all times managed, controlled, and supervised by said Rose Ribbon Mills, Inc., the owner of said looms and not by the respondents herein.

PAR. 6. Respondents have a similar arrangement with the Champin Ribbon Mills, by which the said Champin Ribbon Mills supplies respondents with ribbons and other narrow fabrics manufactured at the instance of respondents and in accordance with certain instructions submitted to said manufacturer by respondents. For this purpose the Champin Ribbon Mills allocates four looms in its factory, located at Paterson, N. J., for the manufacture of finished products for and on behalf of respondents.

PAR. 7. There is usually one worker, or operator, to every two looms in both said mills. These workers are employed by, and receive their wages from, the owners of said mills. The owners of said mills also pay all the taxes on said properties, pay all other overhead charges, and otherwise manage, supervise, operate, and control said establishments without interference of any character whatsoever by, or from, respondents, or anyone else. For the work done by these mills for and upon the order of respondents, the said Rose Ribbon Mills, Inc., and Champin Ribbon Mills receive checks approximately twice a month from the respondents, which checks vary in amount according to the amount of work and time spent on said looms.

PAR. 8. Respondents are not engaged in the business of manufacturing, and are not manufacturers, as those terms are understood by the trade and the purchasing public, generally, but are engaged in the business of distributing and selling ribbons and narrow fabrics manufactured by others. Respondents are regarded in the trade and in the industry as selling agents or jobbers. A selling agent is one who receives the products of looms owned by others on consignment and returns to the principal all monies except the selling commission. A jobber is one who buys the products from a manufacturer and pays for them outright for resale. A manufacturer in the ribbon industry is understood to be one who weaves fabrics, under 18 inches, of silk, rayon, cotton, or mixed fabrics on a plain, jacquard, or Sauer loom.

PAR. 9. A substantial portion of the wholesale and retail purchasers of ribbons and narrow fabrics have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality, and other advantages in dealing direct with the manufacturer rather than a selling agency, or middleman, or anyone else.

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PAR. 10. Many of the respondents' competitors who distribute and sell ribbons and narrow fabrics do not manufacture products sold by them, and do not in any way represent that they are the manufacturers of said products.

PAR. 11. The aforesaid acts, practices, and methods of the respondents in designating themselves, through the use of their firm name "Colonial Ribbon Mills," as manufacturers of the products which they distribute and sell, were and are, calculated to, and had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representation is true and that the respondents are actually manufacturers of the products which they sell. As a direct consequence of the mistaken and erroneous beliefs so induced, a number of the consuming public have purchased a substantial volume of ribbons and narrow fabrics sold by the respondents, with the result that trade has been unfairly diverted to the respondents from their competitors likewise engaged in the business of distributing and selling ribbons and narrow fabrics who truthfully advertise and represent the nature and character of their business. As a result thereof, substantial injury has been, and is now being, done by respondents 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 respondents, Samuel Steckenberg and Abraham M. Fynke, partners, trading as "Colonial Ribbon Mills," are to the prejudice of the public and of respondents' 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 respondents, testimony and other evidence taken before Miles J. Furnas and John W. Addison, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein by Joseph C. Fehr and James T. Welch, counsel for the Commission, and by Gustave A. Steckenberg, counsel for the respondents (oral argument having been waived by respondents), and the Commission having made its find-

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ings as to the facts and its conclusion that said respondents have 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 respondents, Samuel Steckenberg and Abraham M. Fynke, partners trading as Colonial Ribbon Mills, or under any other trade name, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of ribbons and narrow fabrics in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, through the use of the word "Mills," or any other word or term of similar import and meaning, in their trade name, or in any other manner, that they are manufacturers, mill operators, or mill owners, unless and until they actually own and operate, or directly and absolutely control, a factory, plant, or mill wherein said products are made by them.

It is further ordered, That the said respondents shall, within 30 days from the date of service upon them of this order, file with this Commission a report in writing setting forth the manner and form in which they have complied with this order.

IN THE MATTER OF
**FRANK URBAN, GEORGE A. URBAN, AND E. T. URBAN,
INDIVIDUALLY AND TRADING AS CLOSE & COMPANY**

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

Docket 3144. Complaint, June 4, 1937—Decision, Jan. 19, 1938

Where two partners engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which were composed of a number of individually wrapped penny pieces of candy of uniform size and shape, together with number of other articles of merchandise to be given as prizes to chance purchasers of relatively few of said pieces centers of which differed in color from majority thereof, and to purchaser of last of said uniform pieces in assortment—

Sold to wholesalers and jobbers for display and resale to purchasing public by their retailer vendees, in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their products in accordance with aforesaid plan, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public as to involve a game of chance or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by them, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to them trade and custom from their said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition therein and tend to create monopoly thereof in them and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.