

Syllabus

IN THE MATTER OF

ELMER SUSSMAN, TRADING AS DIAMOND BROKERAGE
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3272. Complaint, Nov. 23, 1937—Decision, Feb. 16, 1938*

Where an individual engaged in sale and distribution of diamonds, diamond rings, watches, and other jewelry, in commerce among the various States and in the District of Columbia; in advertising his said products through price lists, catalogs, and other advertising material published, issued, and circulated through the mails to his customers and prospective customers in the various States and in said District—

- (a) Represented that said products were composed of a grade and quality superior to grade and quality possessed by them, and their prices as being in excess of the customary retail prices at which said products usually sold, through such statements, among others of similar tenor, as \$900.00 LADIES DIAMOND SOLITAIRE, 2 carats, 98% perfect blue white set in all platinum * * * specially priced-----\$150," "\$700.00 MAN'S (GENTLEMEN'S) DIAMOND SOLITAIRE, 2 1/8 carats, exceptionally brilliant and perfect * * * now-----\$350," etc., facts being such and other articles and items of merchandise thus listed and described did not possess retail values or prices represented, or closely approximating those represented, and were not of the carat, weight, or degree of perfection thus held out;
- (b) Represented that he was liquidating a stock of merchandise secured from bankrupt sales, banks, estates, and individuals at a fraction of the original cost, through such statements as "Now liquidating a distressed stock of diamond rings at a fraction of their original cost," and "* * * the greatest diamond values ever offered in the northwest * * *," and "These bargains are made possible through our constant effort to secure fine quality diamond jewelry from bankrupt stocks, individuals, banks, estates, and distressed sources," facts being he was not liquidating a distressed stock, as aforesaid set forth, at a fraction of the original cost of such rings, nor did his stock represent greatest value ever offered in northwest; and so-called bargains offered were not purchased from bankrupt stocks, etc., from which he obtained only an infinitesimal part of his stock, with balance purchased in usual channels from which competitors secured their merchandise;
- (c) Represented that various well-known makes of watches, "Value up to \$60. OUR PRICES \$10 to \$30," were "latest round, square or rectangular styles in yellow or white gold, 9, 15, 17, and 21 jewels," etc., and "fully guaranteed," facts being watches offered and described by him as above indicated were not newest style, as represented, but were, in most instances, second-hand and obsolete models; and
- (d) Represented, through letterheads, circulars, order blanks, and general business stationery, and through newspaper and magazine advertisements, that he was a diamond broker, facts being he was not such a broker, but merely a dealer in diamonds, diamond rings, watches and other jewelry;

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With effect of misleading substantial number of purchasers and prospective purchasers into erroneous and mistaken beliefs that his said products were composed of superior materials and were of superior value, or were products which ordinarily retail, in the usual course of trade, for prices closely approximating those listed as being usual retail value or price of said merchandise, that he was liquidating a distressed stock of diamond rings and other merchandise at a fraction of the original cost, that the products were secured from bankrupt stocks, individuals, banks, estates, and distressed sources, and that watches sold were latest models and new merchandise, and of the value represented, and that the diamonds sold were 100 percent perfect and of the full carat weight represented, and that he was a diamond broker, and with result, as consequence of erroneous and mistaken beliefs induced by his said acts, that a substantial part of the purchasing public bought substantial quantity of his products, and of thereby unfairly diverting trade to him from competitors engaged in like and similar businesses and who truthfully represent their products and business status; 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. S. Brogdyne Tew, II for the Commission.

Stinchfield, Mackall, Crounse, McNally & Moore, of Minneapolis, Minn., 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 Elmer Sussman, an individual trading as Diamond Brokerage Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in 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, Elmer Sussman, is an individual trading as Diamond Brokerage Company, and having his principal place of business in the city of Minneapolis, State of Minnesota. He is now, and for more than 1 year last past has been, engaged in the sale and distribution of diamonds, diamond rings, watches, and other jewelry in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said products are sold respondent transports or causes the same to be transported from his principal place of business in the city of Minneapolis, State of Minnesota, to purchasers thereof

located in other States of the United States and in the District of Columbia.

There is now and has been at all times mentioned herein a constant current of trade and commerce in said above described products sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business respondent is now, and has been, in substantial competition with other individuals, partnerships, firms, and corporations engaged in the business of manufacturing, selling, and distributing diamond rings, pins, watches, and other jewelry, and likewise engaged in competition with distributors of diamond rings and pins, watches and other jewelry in commerce between and among the various States of the United States and in the District of Columbia.

Respondent, in soliciting the sale, and in the selling, of said products, and for the purpose of creating a demand on the part of the consuming public therefor, has advertised through the media of price lists, catalogs and other advertising matter published, issued, and circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by him.

PAR. 4. Many articles and items of merchandise listed in said price lists, catalogs, and other advertising matter published and distributed by respondent are described and represented as possessing retail values or prices, carat weight, and degrees of perfection which they do not possess.

PAR. 5. Representative of the advertisements wherein respondent's products are described as possessing retail values or prices, carat weight, and degrees of perfection which they do not possess are the following:

1. \$900.00 LADIES' DIAMOND SOLITAIRE, 2 carats, 98% perfect blue white set in all platinum distinctively paved with 14 large diamonds, specially priced-----\$450.

2. \$700.00 MAN'S (GENTLEMEN'S) DIAMOND SOLITAIRE, 2½ carats, exceptionally brilliant and perfect, set in heavy handsome 14 K yellow gold setting, now-----\$350.

3. \$250.00 LADY'S DIAMOND SOLITAIRE, 1 carat blue white slightly imperfect, set in attractive 14 K white or yellow gold, 6 blue white side diamonds, now-----\$125.

In truth and in fact, said articles and items of merchandise listed in said price lists, catalogs, and other advertising matter, including

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the articles referred to in subdivisions (1), (2), and (3) hereinabove do not possess retail values or prices described or represented and do not possess retail prices or values closely approximating said represented prices. Said articles and items of merchandise are not of the carat weight or degree of perfection represented in respondent's price lists, catalogs, and other advertising matter and are not substantially of the quality and character therein represented.

PAR. 6. The catalogs, price lists, newspaper and magazine articles, and other printed matter of respondent, and herein referred to, contain other misleading and false statements and representations, of which the following is representative:

Now liquidating a distressed stock of diamond rings at a fraction of their original cost.

In this column you will find the greatest diamond values ever offered in the northwest. These bargains are made possible through our constant effort to secure fine quality diamond jewelry from bankrupt stocks, individuals, banks, estates, and distressed sources.

WALTHAM, HAMILTON, BULOVA, ELGIN, GRUEN WATCHES FOR LADIES and MEN; latest round, square, or rectangular styles in yellow or white gold, 9-15-17 and 21 jewels; also pocket watches in 17 and 21 jewel railroad watches. All watches fully guaranteed. Values up to \$60.

OUR PRICES \$10 to \$30.

In truth and in fact, respondent was not, and is not, liquidating a distressed stock of diamond rings at a fraction of their original cost. His stock does not represent and has not represented the greatest values ever offered in the northwest. The alleged bargains offered by respondent were not purchased from bankrupt stocks, individuals, banks, estates, and distressed sources. Further, in truth and in fact, the respondent obtains only an infinitesimal part of his stock from the above enumerated sources. The remainder of respondent's stock is purchased in the usual channels from whence his competitors secure their stock of merchandise.

The watches offered for sale by respondent and described above are not the newest style as represented by respondent, but in most instances are second-hand and obsolete models of watches.

PAR. 7. The respondent, in soliciting the sale of, and in selling, his commodities, and for the purpose of creating a demand on the part of the consuming public for said commodities, now causes, and for more than 1 year has caused, himself to be represented through his letterheads, circulars, order blanks, and general business stationery as well as newspaper and magazine advertisements as a diamond broker.

In truth and in fact the respondent is not a diamond broker, but merely a dealer in diamonds, diamond rings, watches, and other jewelry.

PAR. 8. There are among the competitors of respondent manufacturers and distributors of like and similar products who refrain from advertising or representing through their catalogs and other advertising media, and through fictitiously advertised prices, or in any other manner, that the merchandise offered for sale by them has a merit, origin, and value that it does not have, or that they have a business status which they do not have.

PAR. 9. The foregoing false and misleading statements and representations on the part of the respondent have a tendency and capacity to, and do, mislead a substantial number of purchasers and prospective purchasers into the erroneous beliefs that:

1. The said products are composed of superior materials, and are of superior value, and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices represented as being the usual retail value or price of said merchandise;

2. Respondent is liquidating a distressed stock of diamond rings and other merchandise at a fraction of their original cost;

3. The said products were secured from bankrupt stocks, individuals, banks, estates, and distressed sources;

4. The watches sold by respondent are the latest models and new merchandise, and possess the values represented;

5. Diamonds sold by respondent are 100 percent perfect, and are the full carat weight represented; and

6. Respondent is a diamond broker.

As a result of such erroneous and mistaken beliefs induced by the aforesaid misrepresentations on the part of the respondent, a substantial portion of the purchasing public has purchased a substantial quantity of respondent's products, thereby unfairly diverting trade to the respondent from those competitors engaged in like and similar businesses referred to. As a consequence thereof substantial injury has been and is 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. 10. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 November 23, 1937, issued, and on November 26, 1937, served its complaint in this proceeding upon respondent, Elmer Sussman, an individual trading as Diamond Brokerage Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

On January 13, 1938, respondent filed his answer to the Commission's complaint, in which answer he admitted all the material allegations of the complaint to be true and stated that he waived hearing on the charges set forth in the said complaint and that without further evidence or intervening procedure the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Elmer Sussman, is an individual trading as Diamond Brokerage Company, and has his principal place of business in the city of Minneapolis, State of Minnesota. He is now, and for more than 1 year last past has been, engaged in the sale and distribution of diamonds, diamond rings, watches and other jewelry in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When respondent sells his products, he transports or causes them to be transported from his place of business in the city of Minneapolis, State of Minnesota, to purchasers thereof located in the various States of the United States and in the District of Columbia. There is now and has been at all times mentioned herein a constant current of trade and commerce in said above-described products sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, in the conduct of his business, is now and has been, in substantial competition with other individuals, and with

partnerships, firms, and corporations engaged in the sale and distribution, or in the manufacture, sale, and distribution of diamond rings, watches and other jewelry.

PAR. 4. The respondent, in soliciting the sale, and in the selling of his products, and for the purpose of creating a demand on the part of the consuming public therefor, has advertised through the media of price lists catalogs and other advertising matter published, issued, and circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia.

In the ways and means aforesaid, respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by him. Many articles and items of merchandise listed in respondent's price lists, catalogs and other advertising matter published and distributed by him are described and represented as possessing retail values or prices, carat weight, and degrees of perfection which they do not possess. Representative of the claims and representations made in respondent's advertisements wherein his products are described as possessing retail values or prices, carat weight, and degree of perfection which they do not possess are the following:

\$900.00 LADIES DIAMOND SOLITAIRE, 2 carats, 98% perfect blue white set in all platinum distinctively paved with 14 large diamonds specially priced-----\$450.

\$700.00 MAN'S (GENTLEMEN'S) DIAMOND SOLITAIRE, 2½ carats, exceptionally brilliant and perfect, set in heavy handsome 14 K yellow gold setting, now-----\$350.

\$250 LADY'S DIAMOND SOLITAIRE, 1 carat blue white slightly imperfect, set in attractive 14 K white or yellow gold, 6 blue white side diamonds, now-----\$125.

The articles and items of merchandise listed in the price lists, catalogs and other advertising matter do not possess retail values or prices described or represented and do not possess retail prices or values closely approximating the represented prices. The articles and items of merchandise are not of the carat, weight, or degree of perfection represented in respondent's price lists, catalogs and other advertising matter and are not substantially of the quality and character therein represented.

PAR. 5. The respondent has made other misleading and false claims and representations in his catalogs, price lists, newspaper and magazine advertisements and other printed matter, of which the following is representative:

Now liquidating a distressed stock of diamond rings at a fraction of their original cost.

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In this column you will find the greatest diamond values ever offered in the northwest. These bargains are made possible through our constant effort to secure fine quality diamond jewelry from bankrupt stocks, individuals, banks, estates, and distressed sources.

WALTHAM, HAMILTON, BULOVA, ELGIN, GRUEN WATCHES FOR LADIES and MEN; latest round, square or rectangular styles in yellow or white gold, 9-15-17 and 21 jewels; also pocket watches in 17 and 21 jewel railroad watches. All watches fully guaranteed. Value up to \$60.

OUR PRICES \$10 to \$30

The respondent was not, and is not, liquidating a distressed stock of diamond rings at a fraction of their original cost. His stock does not represent, and has not represented, the greatest value ever offered in the northwest. The so-called bargains offered by respondent were not purchased from bankrupt stocks, individuals, banks, estates, and distressed sources. The respondent obtains only an infinitesimal part of his stock from the above sources. The remainder of respondent's stock is purchased in the usual channels from which his competitors secure their stock of merchandise.

The watches offered for sale by respondent and described *supra* are not the newest style as represented by respondent. In most instances, they are second-hand and obsolete models of watches.

PAR. 6. In soliciting the sale of, and in selling his commodities and for the purpose of creating a demand on the part of the purchasing public for his commodities, the respondent now causes, and for more than 1 year has caused, himself to be represented through his letterheads, circulars, order blanks and general business stationery, as well as newspaper and magazine advertisements as a diamond broker.

The respondent is not a diamond broker, but merely a dealer in diamonds, diamond rings, watches, and other jewelry.

PAR. 7. The use by the respondent of the false and misleading statements and representations set out herein has a tendency and capacity to, and does mislead a substantial number of purchasers and prospective purchasers into the erroneous and mistaken beliefs that the products are composed of superior materials and are of superior value, or are products which ordinarily retail in the usual course of trade for prices closely approximating the prices listed as being the usual retail value or price of said merchandise; that respondent is liquidating a distressed stock of diamond rings and other merchandise at a fraction of their original cost; that the products were secured from bankrupt stocks, individuals, banks, estates, and distressed sources; that the watches sold by respondent are the latest models and new merchandise, and possess the values represented; that diamonds sold by respondent are 100 percent perfect and are the

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full carat weight represented; and that the respondent is a diamond broker.

PAR. 8. As a result of the erroneous and mistaken beliefs induced by the acts of the respondent, a substantial part of the purchasing public has purchased a substantial quantity of respondent's products, thereby unfairly diverting trade to the respondent from those competitors engaged in like and similar businesses and who truthfully represent the products offered for sale and sold by them, and their business status.

As a consequence thereof, substantial injury has been, and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Elmer Sussman, an individual trading as Diamond Brokerage Company, are to the prejudice of the public and the 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 of respondent, in which answer respondent admits all the material allegations of the complaint to be true and states that he waives hearing on the charges set forth in the said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and its conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and 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, Elmer Sussman, an individual trading as Diamond Brokerage Company, or under any other trade name, his representatives, agents and employees, in connection with the offering for sale, sale, and distribution of diamonds, diamond rings, watches, and other jewelry in interstate commerce or in the

District of Columbia, do forthwith cease and desist from, directly or indirectly:

1. Representing that said products of respondent are composed of materials of a grade and quality superior to that actually contained;

2. Representing that fictitious prices in excess of the customary retail prices at which said products of respondent are customarily sold are the usual and customary retail prices for said products;

3. Representing that respondent is liquidating a stock of merchandise secured from bankrupt sales, banks, estates, and individuals at a fraction of the original cost, when said merchandise was purchased in the usual merchandise marts in the usual course of trade;

4. Representing that respondent's watches are the latest models, unless this is a fact;

5. Representing that respondent's diamonds possess a greater degree of perfection or a greater carat weight than they actually possess;

6. Representing that respondent is a diamond broker when such is not the fact.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.