

Syllabus

IN THE MATTER OF

JOSEPH COMINSKY, TRADING AS WAVERLEY TAILORS,
MAYFAIR CLOTHING COMPANY, AND BARCLAY
CLOTHING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3193. Complaint, Aug. 3, 1937—Decision, Feb. 17, 1938*

Where an individual engaged, under trade name including word "Tailors" and other names, in offer and sale of ready-made suits, overcoats, and topcoats for men, through traveling salesmen and agents, to purchasers in various other States, in substantial competition with others engaged in sale and distribution of such ready-made articles in interstate commerce, including many selling their clothing through salesmen or agents and who have not adopted acts, practices, and methods as below set forth, and including (1) many who, as manufacturers of such garments, rightly represent themselves as such, (2) others who, as purchasers of such products dealt in by them, do not represent that they manufacture same, and (3) many who rightfully represent their said suits, overcoats, and topcoats for men as tailored according to the individual measurements of the purchaser from material of the color, weave, grade, quality, and texture selected from samples displayed, and (4) many who sell such garments made in stock sizes and do not represent same as made to purchaser's individual measurements—

- (a) Represented, through his said agents and representatives and otherwise, that orders solicited and received, as aforesaid, were forwarded to him at his principal place of business in New York City, and that said place of business was a tailoring establishment, facts being he was not a tailor or manufacturer of clothing, and none of his said ready-made suits, overcoats, and topcoats were made by him, but were manufactured by others;
- (b) Represented, as aforesaid, through order blanks supplied his said agents with this trade name thereon and directions for taking measurements regarded, usually, as essential to tailoring of suit, overcoat, or topcoat to customer's individual measure, and through the display of such blanks and the taking of such measurements, and through statements and conduct of his said agents, that the ready-made garments, sale of which was being thus solicited, were tailored to individual measurements of purchaser, and made use of such expressions as "Tailored-to-Fit," "Made-to-Measure," and "Custom-Made," facts being the particular garments involved had been previously manufactured without regard to individual measurements of purchaser to whom eventually sold, and were "ready-made," and were not tailored to fit, made to measure, custom made, or made to order, as represented, but, as aforesaid, were the ready-made variety or stock type, and altered, when deemed necessary, to conform partially to measurements shown on order blanks; and
- (c) Represented and implied, as aforesaid, to prospective purchasers that he would make for and deliver to them made-to-measure or tailor-made garments from material of the color, weave, quality, and texture selected by purchasers from samples exhibited by said salesmen or agents, facts being

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suits and other garments sent to customers, in many instances, were not made from materials corresponding to samples as displayed to them by his said sales agents and representatives, and selected by the purchaser, but, in many instances, were furnished in materials substantially inferior in quality, grade, and texture to that of sample displayed and selected;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers into mistaken and erroneous beliefs that said individual was a manufacturer of men's clothing, garment ordered would be made to individual measurements of purchaser and tailored to fit, made to measure, custom made, or made to order, as understood by public, and, as ordered, would be made from material, color, weave, grade, quality, and texture selected by purchaser from samples exhibited by salesmen or agent, and into purchase of his said suits, overcoats, and topcoats in and on account of such beliefs, and with result, as a consequence thereof, that substantial trade in interstate commerce was unfairly diverted to him from competitors who do not use similar acts and practices in connection with the sale of their said products; to their injury and that of the public:

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

Before *Mr. John W. Addison*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Benjamin F. Steinberg, 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 Joseph Cominsky, an individual doing business under the trade names Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing 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, Joseph Cominsky, is an individual, having his principal office and place of business located at 678 Broadway, in the city of New York, in the State of New York. Respondent, for more than 2 years last past, has been, and still is, engaged in the business of selling men's ready-made suits, overcoats, and topcoats, and in offering said articles of men's clothing for sale and selling the same in commerce between the State of New York and the several States of the United States, and in the District of Columbia. When said articles of clothing are sold, respondent transports, or causes the same to be transported, from his place of business in the State of New York

to the purchasers thereof, located in States of the United States other than the State of New York, and in the District of Columbia. There has been for more than 2 years last past, and still is, a constant current of trade and commerce in said articles of clothing thus sold and distributed by respondent, between and among the various States of the United States, and in the District of Columbia. Respondent is now, and for more than 2 years last past has been, in substantial competition with other individuals and with partnerships, corporations, and firms engaged in the manufacture, or in the sale and distribution, of like and similar articles of men's clothing in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, the respondent, by and through sales agents and representatives, sells and has sold men's ready-made suits, overcoats, and topcoats directly to the persons by whom such suits, overcoats, and topcoats are to be worn. Respondent furnishes and has furnished to his sales agents and representatives order blanks, bearing one of his trade names, which set forth directions for taking measurements usually regarded as essential to the tailoring of a suit, overcoat, or topcoat to the individual measure of a customer. Such sales agents and representatives, by displaying such order blanks to customers and prospective customers, and by taking the measurements specified thereby, and by their statements and conduct, represent and have represented to such customers and prospective customers that the men's ready-made suits, overcoats, and topcoats sold by respondent are tailored to the individual measurements of the purchasers thereof. Respondent also, through said sales agents and representatives and otherwise, represents to his customers and prospective customers, that the men's ready-made suits, overcoats, and topcoats sold and offered for sale by him are "Tailored-to-Fit," "Made to Measure," and "Custom-Made." Further, respondent represents, through said sales agents and representatives and otherwise, that orders so solicited and received are forwarded to said respondent at his principal place of business, in the city of New York, State of New York, which said place of business respondent and his said sales agents and representatives represent to be a tailoring establishment. Respondent further represents that said orders, when received by him, are filled according to said measurements, and of a cloth whose grade and texture is represented to be the same as the samples displayed by said sales agents and representatives and as selected by the customer.

PAR. 3. The statements and representations of respondent set forth in paragraph 2 hereof, and others similar thereto, have the capacity

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and tendency to deceive purchasers and prospective purchasers of respondent's said articles of clothing into the false and erroneous beliefs:

(a) That respondent is a tailor or manufacturer;

(b) That the men's ready-made suits, overcoats, and topcoats sold and distributed by respondent are "Tailored-to-Fit," "Made to Measure," "Custom-Made," or "Made to Order";

(c) That said men's ready-made suits, overcoats, and topcoats are made in accordance with measurements submitted by said sales agents and representatives, and of a cloth whose grade and texture is the same as the samples displayed by such sales agents and representatives and as selected by said customers.

PAR. 4. In truth and in fact, respondent, trading under the various trade names hereinabove set forth, is not a tailor or manufacturer of clothing. None of the men's ready-made suits, overcoats, and topcoats sold by respondent are made by respondent, but they are made by other manufacturers. The said men's suits, overcoats, and topcoats sold and distributed by him were and are not "Tailored to Fit," "Made to Measure," "Custom Made," or "Made to Order," as represented, but were and are of the ready-made variety or stock type, and are altered, when deemed necessary, to partially conform to the measurements shown on the order blanks. Further, in many instances, the men's suits, overcoats, and topcoats sent to customers did not and do not correspond to the samples displayed to said customers by said sales agents and representatives, and as selected by said customers. Nor are said men's suits, overcoats, and topcoats made in accordance with measurements submitted by respondent's said sales agents and representatives, or of a cloth whose grade and texture is the same as that of the samples displayed by said respondent's sales agents and representatives, and as selected by the customers. In many instances, said garments are furnished in materials substantially inferior in quality, grade, and texture to that of the sample displayed and selected by the purchasers.

PAR. 5. There are, among the competitors of respondent referred to in paragraph 1 hereof, many who manufacture the men's suits, overcoats, and topcoats which they sell, and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the men's suits, overcoats, and topcoats in which they deal, and which they resell, who do not represent that they manufacture said men's suits, overcoats, and topcoats. There are also, among said competitors, many who rightfully represent that the men's suits, overcoats, and topcoats which they sell are tailored according to the individual measurements of the pur-

chasers thereof, of a cloth whose grade and texture is the same as that of the samples displayed by them and by their sales agents and representatives; and others of said competitors who sell men's suits, overcoats, and topcoats made in stock sizes, and who do not represent that the men's suits, overcoats, and topcoats sold by them are made to the individual measurements of the purchasers.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 3 hereof, and into the purchase of respondent's said suits, overcoats, and topcoats in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from those competitors referred to in paragraph 5 as herein described. As a consequence thereof, substantial injury is done by respondent to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 7. Said acts and practices of respondent are all 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 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 August 3, 1937, issued, and, on August 4, 1937, served its complaint in this proceeding upon respondent Joseph Cominsky, trading as Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing 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, the Commission by order duly entered herein extended the respondent's time for filing answer to January 22, 1938, on which date the respondent filed an answer to the complaint wherein he admitted all of the material allegations of the complaint to be true and stated that the Commission might, without further evidence or other intervening procedure, 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, 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, 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 Joseph Cominsky is an individual engaged in the business of offering for sale, and selling, ready-made suits, overcoats, and topcoats for men, 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 678 Broadway, New York, N. Y. Respondent has been trading and doing business under the names Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing 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 ready-made suits, overcoats, and topcoats for men, in interstate commerce. Among such competitors are many who likewise sell such 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. In the course and conduct of his business, as aforesaid, the respondent, by and through sales agents and representatives, sells ready-made suits, overcoats, and topcoats for men directly to the persons by whom such suits, overcoats, and topcoats are to be worn. Respondent furnishes to his sales agents and representatives order blanks, bearing one of his trade names, which set forth directions for taking measurements usually regarded as essential to the tailoring of a suit, overcoat, or topcoat to the individual measure of a customer. Such sales agents and representatives, by displaying such order blanks to customers and prospective customers, and by taking the measurements specified thereby, and by their statements and conduct, represent to such customers and prospective customers that the ready-made suits, overcoats, and topcoats for men sold by respondent are tailored to the individual measurements of the purchaser thereof. Respondent also, through said sales agents and representatives and otherwise, represents to his customers and prospective customers, that the ready-made suits, overcoats, and topcoats

for men sold and offered for sale by him are "Tailored-to-Fit," "Made-to-Measure," and "Custom-Made," 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, quality, and texture 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.

Respondent represents, through said sales agents and representatives and otherwise, that orders so solicited and received are forwarded to the respondent at his principal place of business in the city of New York, which said place of business respondent and his sales agents and representatives represent to be a tailoring establishment. Respondent further represents that said orders when received by him are filled by making a garment according to the individual measurement of the purchaser from a material of the color, weave, grade, quality, and texture selected by the purchaser from samples exhibited by said agents and representatives.

PAR. 3. The statements and representations of respondent set forth in paragraph 2 hereof, and others similar thereto, have the capacity and tendency to deceive purchasers and prospective purchasers of respondent's said articles of clothing into the mistaken and erroneous belief that the respondent is a manufacturer of men's clothing; that the garment ordered will be made to the individual measurement of the purchaser; that such garment will be "Tailored-to-Fit," "Made-to-Measure," "Custom-Made," or "Made-to-Order" as those terms are understood by the public; and that the garment ordered will be made from material of the color, weave, grade, quality, and texture selected by the purchaser from samples exhibited by salesmen or agents of the respondent.

PAR. 4. In truth and in fact, respondent, trading under the various trade names hereinabove set forth, is not a tailor or manufacturer of clothing. None of the ready-made suits, overcoats, and topcoats for men sold by respondent are made by respondent, but they are made by other manufacturers. The said suits, overcoats, and topcoats for men sold and distributed by him were and are not "Tailored-to-Fit," "Made-to-Measure," "Custom-Made," or "Made-to-Order," as represented, but were and are of the ready-made variety or stock type, and are altered, when deemed necessary, to partially conform to the

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measurements shown on the order blanks. In many instances, the suits, overcoats, and topcoats for men sent to customers are not made from materials corresponding to the samples displayed to said customers by said sales agents and representatives, and as selected by said purchasers. Nor are said suits, overcoats, and topcoats for men made in accordance with individual measurements of the purchasers submitted by respondent's said sales agents and representatives. In many instances, said garments are furnished in materials substantially inferior in quality, grade, and texture to that of the sample displayed and selected by the purchasers.

PAR. 5. There are, among the competitors of respondent referred to in paragraph 1 hereof, many who manufacture suits, overcoats, and topcoats for men which they sell, and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase suits, overcoats, and topcoats for men in which they deal, and which they resell, who do not represent that they manufacture said suits, overcoats, and topcoats for men. There are also, among said competitors, many who rightfully represent that the suits, overcoats, and topcoats for men which they sell are tailored according to the individual measurements of the purchasers thereof from material of the color, weave, grade, quality, and texture selected by purchasers from samples displayed; among said competitors are many who sell suits, overcoats, and topcoats for men made in stock sizes, and who do not represent that the suits, overcoats, and topcoats for men sold by them are made to the individual measurements of the purchasers.

PAR. 6. The above alleged acts and practices of respondent have the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the mistaken and erroneous beliefs described in paragraph 3 hereof, and into the purchase of respondent's said suits, overcoats, and topcoats for men in and on account of such beliefs. As a consequence thereof, substantial trade in interstate commerce is unfairly diverted to the respondent from his competitors who do not use similar acts and practices in connection with the sale of their said products in said commerce, to the injury of such competitors and the public.

CONCLUSION

The aforesaid acts and practices of the respondent Joseph Cominsky, trading as Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing 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

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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 January 22, 1938, by respondent, admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent Joseph Cominsky, an individual trading as Waverley Tailors, Mayfair Clothing Company, and Barclay Clothing Company, or under any other name or style, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of ready-made suits, overcoats and topcoats for men in interstate commerce and in the District of Columbia; do forthwith cease and desist from directly or indirectly representing:

1. That respondent manufactures the suits, overcoats and topcoats sold and distributed until he actually owns and operates, or directly and absolutely controls, the tailoring establishment, factory, or plant wherein such clothing is made;

2. That the ready-made suits, overcoats and topcoats sold by him are tailored-to-fit, made-to-measure, custom-made, or made-to-order, unless and until his said garments are actually cut and made to the individual measurements of the purchasers;

3. That the garments sold by respondent will be made from the material selected by the purchasers from samples submitted by his salesmen or agents, unless and until the garments sold by him are made from materials of the color, weave, quality, and texture selected by such purchasers.

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

IN THE MATTER OF
BUNTE BROTHERS, INC.

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

Docket 1811. Complaint, Jan. 17, 1936¹—Decision, Feb. 19, 1938

Where a corporation engaged in manufacture and sale of "break and take," or "draw" or "deal" assortments of candy, sale and distribution of which, affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, who comprise substantial number of purchasers and consumers of such type of candy, and particularly of so-called "break and take" assortments, and appearance of which "break and take," "draw," or "deal" assortments in the markets of manufacturers of "straight" merchandise has been followed by marked decrease in sale of such "straight" goods, due to gambling or lottery feature connected with other—

Sold to wholesalers and retailers (1) "break and take" assortments, together with explanatory display cards for retailers' use, composed of number of chocolate-covered penny candies of uniform size and shape, together with number of larger pieces, to be given as prizes to those securing by chance one of a relatively few of said uniform pieces, enclosed colored centers of which differed from that of majority, and to purchaser of last of said uniform pieces in assortment, and (2) "draw" or "deal" assortments composed of number of packages of candy of varying size, together with punchboard or push card, as case might be, for sale in accordance with explanatory legend thereon and under a plan by which chance purchaser received, for nickel paid, one of said packages, of a value in excess of said sum, or nothing, dependent upon success or failure in punching of certain numbers or punching of last number in each of certain sections into which board was divided;

So packed and assembled that such various assortments were and might be displayed, distributed, and sold by the numerous retail dealer purchasers thereof to consuming public by lot or chance, in accordance with aforesaid or similar plans, and sold, as packed, as aforesaid and without alteration or rearrangement, and with knowledge and intent that such candy should and would thus be resold to purchasing public as aforesaid by retail dealers therein; contrary to public policy and in competition with many who do not make and sell such lottery assortments but sell, in competition therewith, their "straight" merchandise, and with many who regard such sale and distribution by lot or chance as morally bad and as encouraging gambling, and especially among children, and as injurious to industry in question through resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with means of violating the laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed that same can be resold to public by lot or chance;

¹ Amended and supplemental.