

IN THE MATTER OF
UNITED WOOLEN MILLS

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

Docket 3312. Complaint, Jan. 25, 1938—Decision, Mar. 2, 1938

Where a corporation engaged in sale of men's suits and clothing, to purchasers in other States, in competition with others likewise engaged in sale and distribution of such products in commerce as aforesaid, and including many who distribute and sell such suits and clothing, not manufactured by them, and who do not in any way represent themselves as manufacturers thereof—Adopted and used corporate and trade name including word "Mills," and represented, through such statements as "UNITED WOOLEN MILLS Tailors-to-Men", etc., displayed on letterheads, billheads, cards, invoices, labels, and newspaper advertising matter of interstate distribution, that it was the manufacturer of the garments sold in commerce by it, notwithstanding fact it did not manufacture said garments, as understood by trade and purchasing public generally, nor own and operate, or directly and absolutely control, any mill or mills making same;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such representation was true, and that it actually was the manufacturer of the garments sold by it, and with result, as direct consequence of mistaken and erroneous beliefs thus induced, that number of consuming public purchased substantial volume of its said suits and clothing as and from clothing manufacturer, for direct dealing with whom a substantial portion of wholesale and retail purchasers of such products has preference, as securing closer prices, superior quality, and other advantages not had through selling agency or middleman or anyone else, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of men's suits and clothing 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.

Mr. Karl Stecher for the Commission.

Mr. A. Leo Oberdorfer, of Birmingham, Ala., 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 United Woollen Mills, a corporation, 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. The respondent, United Woolen Mills, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal place of business at 315 North 19th Street in the city of Birmingham, State of Alabama. It is, and for more than 3 years last past has been, engaged in the sale of men's suits and clothing, in commerce between the various States of the United States. It causes said garments, when sold, to be shipped from its place of business in the State of Alabama to purchasers thereof located or residing in various States of the United States other than the State of Alabama. In the course and conduct of its business said respondent is, and has been, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution of men's suits and clothing in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, said respondent adopted as and for its corporate and trade name, the words "United Woolen Mills," under which to carry on its business, and which corporate and trade name it has used continuously for several years last past, and is now using, in soliciting the sale of and selling its said men's garments in commerce among and between the various States of the United States. Respondent has caused its said corporate and trade name, "United Woolen Mills," to appear on its letterheads, billheads, cards, invoices, labels, and newspaper advertising matter having interstate distribution.

The said letterheads, billheads, cards, invoices, labels affixed to said garments, and newspaper advertising matter distributed by respondent, as aforesaid, contain misleading representations and statements concerning its business status, of which the following is representative:

UNITED WOOLEN MILLS
Tailors-to-Men
315 North Nineteenth Street
Birmingham, Ala.

UNITED WOOLEN MILLS
(Trade-Mark)
Birmingham—Anniston

UNITED
WOOLEN
MILLS

Such statements as hereinabove set out serve as representations to the purchasing public that the respondent is the manufacturer of the garments which it sells in commerce as herein detailed.

PAR. 3. Respondent does not, in truth and in fact, make or manufacture the garments which it sells and distributes in commerce as herein detailed as those terms are understood by the trade and purchasing public generally, nor does it own and operate or directly and absolutely control any mill or mills wherein the garments sold by it are made or manufactured. The garments sold by respondent are made or manufactured in a mill or mills or factories which respondent does not own, operate, or control in any way.

PAR. 4. A substantial portion of the wholesale and retail purchasers of men's suits and clothing 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. 5. Many of the respondent's competitors who distribute and sell men's suits and clothing do not manufacture products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 6. The false and misleading representation made by the respondent as aforesaid, through the use of the name "United Woolen Mills," that it is the manufacturer of the garments which it distributes and sells 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 respondent is actually the manufacturer of the garments which it sells. 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 men's suits and clothing sold by the respondent with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of distributing and selling men's suits and clothing 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 respondent to competition in commerce among and between the various States of the United States.

PAR. 7. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's 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 January 25, 1938, issued, and on January 27, 1938, served its complaint in this proceeding upon respondent, United Woolen Mills, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute 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 substitute answer, briefs having been waived, and the Commission, having duly considered the matter 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. The respondent, United Woolen Mills, is a corporation organized and existing under and by virtue of the laws of the State of Alabama, with its principal place of business at 315 North 19th Street in the city of Birmingham, State of Alabama. It is, and for more than 3 years last past has been, engaged in the sale of men's suits and clothing, in commerce between the various States of the United States. It causes said garments, when sold, to be shipped from its place of business in the State of Alabama to purchasers thereof located or residing in various States of the United States other than the State of Alabama. In the course and conduct of its business said respondent is, and has been, in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution of men's suits and clothing in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, said respondent adopted as and for its corporate

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and trade name the words "United Woolen Mills" under which to carry on its business, and which corporate and trade name it has used continuously for several years last past, and is now using, in soliciting the sale of and selling its said men's garments in commerce among and between the various States of the United States. Respondent has caused its corporate and trade name, "United Woolen Mills," to appear on its letterheads, billheads, cards, invoices, labels, and newspaper advertising matter having interstate distribution.

The said letterheads, billheads, cards, invoices, labels affixed to said garments, and newspaper advertising matter distributed by respondent, as aforesaid, contain misleading representations and statements concerning its business status, of which the following is representative:

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Such statements as hereinabove set out serve as representations to the purchasing public that the respondent is the manufacturer of the garments which it sells in commerce as herein detailed.

PAR. 3. Respondent does not, in truth and in fact, make or manufacture the garments which it sells and distributes in commerce as herein detailed as those terms are understood by the trade and purchasing public generally, nor does it own and operate or directly and absolutely control any mill or mills wherein the garments sold by it are made or manufactured. The garments sold by respondent are made or manufactured in a mill or mills or factories which respondent does not own, operate, or control in any way.

PAR. 4. A substantial portion of the wholesale and retail purchasers of men's suits and clothing 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. 5. Many of the respondent's competitors who distribute and sell men's suits and clothing do not manufacture products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 6. The false and misleading representation made by the respondent as aforesaid, through the use of the name "United Woolen Mills," that it is the manufacturer of the garments which it distributes and sells 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 respondent is actually the manufacturer of the garments which it sells. 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 men's suits and clothing sold by the respondent with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of distributing and selling men's suits and clothing 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 respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, United Woolen Mills, 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 substitute answer of respondent, in which substitute answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and 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, United Woolen Mills, a corporation, its officers, representatives, agents, and employes, in connection with the offering for sale, sale, and distribution of clothing for men, suits, pants, and overcoats in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "Mills" or any other word or phrase of similar import and meaning as part of its corporate name or in any other manner, or through any other means or device, that it is the manufacturer or maker of the products which it sells unless and until it actually owns and operates or directly and absolutely controls a plant or mill wherein said products are manufactured by it.

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

Syllabus

IN THE MATTER OF
PRENDERGAST-DAVIES COMPANY, LTD.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2849. Complaint, June 20, 1936—Decision, Mar. 5, 1938*

Where word "Distilleries," when used in connection with liquor industry and products thereof, had had and still had a definite significance and meaning to minds of wholesalers and retailers and to ultimate purchasing public as designating places where such liquors are made by process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, and substantial portion of purchasing public preferred to buy spirituous liquors prepared and bottled by distilleries; and thereafter a corporation engaged as importer, wholesaler, and retailer of whiskies and other alcoholic beverages, in substantial competition with others similarly engaged—

- (a) Sold bottled whisky, labels on which described same as "Bottled in Scotland, MacNab Distilleries Limited, 266 Clyde St., Glasgow, Scotland. Head Office 11 Waterloo Place, London S. W. 1, England," and thereby represented to customers, and supplied to them means of representing to their retailer-vendees and to ultimate consuming public, that whisky thus contained was made in Scotland by aforesaid "Distilleries";

Notwithstanding fact said concern neither owned, operated, nor controlled any place or places where alcoholic liquors are produced by process of original and continuous distillation from mash, wort, or wash, and did not produce any whisky which went into bottles thus labeled, and whisky in question was made for it under agreement with English distillers, and there were no such distilleries at said Glasgow address; and

Where "Scotch Whisky" had long had and still had definite significance to minds of wholesalers, retailers, and ultimate purchasing public as meaning distinctive product of Scotland, there made, and a substantial portion of purchasing public preferred to buy Scotch whisky made in Scotland; and thereafter aforesaid importer, wholesaler, and retailer—

- (b) Sold whisky in bottles, aforesaid labels of which further represented same as "Sandy MacNab's Old Liqueur Scotch Whiskey, a blend of the finest aged Scotch Whiskey, Produce of Scotland—Bottled in Scotland, MacNab Distilleries Limited," etc., as above set forth, and thereby represented to customers, and supplied to them means of representing to own vendee-retailers and to ultimate consuming public, that whisky thus contained was a true Scotch Whisky, distinctive product of Scotland, and there made by the MacNab Distilleries;

Notwithstanding fact said liquor was not a distinctive product of Scotland, nor there made nor bottled, and was neither "Scotch Whisky" in fact nor in accordance with standards of identity for distilled spirits established by Federal Alcohol Administration;

With effect of misleading and deceiving dealers and purchasing public into erroneous beliefs that Scotch whisky sold by it was product of an actual distillery in Scotland and was a distinctive product of said country, there