

Complaint

IN THE MATTER OF

UNIVERSAL HANDKERCHIEF MFG. COMPANY, INC.

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

Docket 3270. Complaint, Nov. 22, 1937—Decision, Apr. 23, 1938

Where a corporation engaged in sale and distribution of packaged handkerchiefs to jobbers—

- (a) Displayed on letterheads, cartons, invoices, order blanks, and other printed matter circulated through the various states to customers and prospective customers, corporate or trade name containing letters "Mfg.," and represented thereby that it was the manufacturer of the products sold by it, and in certain of said advertising that it was the "largest manufacturer of packaged handkerchiefs in the United States," and "World's largest makers of one quality handkerchiefs," with factories in certain New Jersey cities;

Facts being it neither owned a factory nor operated nor controlled any factories making handkerchiefs, but purchased cloth from various cotton textile factories and delivered same to certain manufacturers, who made said cloth into handkerchiefs in accordance with its specifications as to spinning, cutting, number of stitches making hem, and dampening, and delivered finished articles to it for packaging in its own place of business and for resale as above set forth; and

- (b) Falsely represented that handkerchiefs sold by it were laundered before packaging for resale, or were "laundered soft" or "laundered soft finish";

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that said representations were true and with result that substantial number of such public purchased considerable volume of its said articles as and for purchases made directly from the manufacturer thereof, preferred by substantial portion of wholesale and retail buyers as offering, in their belief, closer prices, better quality, and other advantages not had by dealing through jobber, packager, selling agency, middleman, or otherwise, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of handkerchiefs, and who truthfully advertised and represented nature and character of their business;

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

Mr. Joseph C. Fehr for the Commission.

Foster & Sorin, 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 Uni-

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versal Handkerchief Mfg. Co., Inc., a corporation, hereinafter referred to as respondent, has been and now is 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. Respondent, Universal Handkerchief Mfg. Co., Inc., is a corporation organized and existing by virtue of the laws of the State of New York, having its principal office and place of business located at 309 Fifth Avenue, in the city of New York, in the State of New York. Respondent is now, and has been for more than 1 year last past, engaged in the business of selling and distributing packaged handkerchiefs in commerce as herein set out.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said handkerchiefs, when sold, to be transported from its 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. Respondent has at all times maintained a constant current of trade in said handkerchiefs, sold and distributed by it 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 its business, as aforesaid, respondent is now, and has been for more than 1 year, in substantial competition with other corporations, and with firms, partnerships, and individuals likewise engaged in the business of selling and distributing handkerchiefs 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 the purchase of handkerchiefs sold by it, respondent now uses, and at all times herein referred to has used, its corporate name containing the letters "Mfg." in soliciting the sale of and selling its said handkerchiefs. It has caused said corporate name containing the letters "Mfg." to be prominently and conspicuously displayed on its letter-heads, display cartons, invoices, order blanks and other printed matter circulated throughout the various States of the United States to customers and prospective customers. Certain of said advertising matter also carried and now carries statements such as:

**Largest Manufacturers of Packaged Handkerchiefs in the United States
World's Largest Makers of One Quality Handkerchiefs**

Factories, Passaic, N. J., Ellenville, N. Y.

**Made and Guaranteed by Universal Handkerchief Mfg. Co., Inc., Makers
of Handkerchiefs**

and the containers of certain of respondent's said handkerchiefs bore and now bear the words "laundered soft" or "laundered soft finish."

The statements hereinabove set out serve as representations on the part of respondent to customers, prospective customers, and to the public generally, that respondent is a manufacturer of handkerchiefs and operates factories at Passaic, N. J., and Ellenville, N. Y., and that its said handkerchiefs are laundered by respondent before packaging for resale.

PAR. 5. Respondent did not and does not now make or manufacture its said handkerchiefs. It did not and does not now actually own and operate, or directly and absolutely control a plant or factory at Passaic, N. J., or Ellenville, N. Y., or elsewhere in which said handkerchiefs are made or manufactured. Respondent sells, and fills its orders with, handkerchiefs made or manufactured by others and then purchased by it. Respondent's handkerchiefs are not laundered before packaging so as to be properly represented as such.

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

PAR. 7. Many of the respondent's competitors who distribute and sell handkerchiefs do not manufacture the handkerchiefs sold by them and do not in any way represent that they are the manufacturers thereof.

PAR. 8. The false and misleading representations made by the respondent as set out in paragraph 4 hereof 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 representations are true. As a consequence of such mistaken and erroneous beliefs, induced as aforesaid, a number of the consuming public have purchased a substantial volume of the handkerchiefs 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 selling and distributing handkerchiefs, 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 and in the District of Columbia.

PAR. 9. 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 the Federal Trade Commission Act, the Federal Trade Commission, on November 22, 1937, issued and served its complaint in this proceeding upon respondent, Universal Handkerchief Mfg. Co., Inc., 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 said respondent's answer thereto, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts, executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto; and that the Commission might proceed upon said statement of facts to make and issue its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments or the filing of briefs. Thereafter, the proceeding came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being 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, Universal Handkerchief Mfg. Co., Inc., a corporation, was organized in January 1936, under the laws of the State of New York. Its principal office and place of business is located at 309 Fifth Avenue, in the Borough of Manhattan, city, county and State of New York. The name of the respondent corporation was changed to "Universal Handkerchief Co., Inc." by the filing of a certificate of change of name by the respondent in the office of the secretary of state of the State of New York, on the 24th day of January 1938.

PAR. 2. Respondent has been for more than 1 year last past engaged in the business of selling and distributing packaged handkerchiefs in

interstate commerce. In the operation of its said business, respondent causes said handkerchiefs, when sold, to be transported from its 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, and in the District of Columbia. Respondent has at all times maintained a course of trade in said handkerchiefs, sold and distributed by it in commerce between and among the various States of the United States, and in the District of Columbia. Respondent does a substantial business in both interstate and intrastate commerce. Said handkerchiefs are sold by the respondent through its salesmen throughout the United States to jobbers and respondent makes no direct sales to retailers or ultimate purchasers.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is now, and has been for more than 1 year, in substantial competition with other corporations, and with firms, partnerships, and individuals also engaged in the business of selling and distributing handkerchiefs 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, respondent, until the change of its name, used in its corporate name the letters "Mfg." It has heretofore caused said corporate name containing the letters "Mfg." to be displayed on its letterheads, display cartons, invoices, order blanks, and other printed matter circulated throughout the various States of the United States to customers and prospective customers. Certain of said advertising matter also carried and now carries statements such as:

Largest Manufacturers of Packaged Handkerchiefs in the United States
World's Largest Makers of One Quality Handkerchiefs

Factories, Passaic, N. J., Ellenville, N. Y.

Made and Guaranteed by Universal Handkerchief Mfg. Co., Inc., Makers of Handkerchiefs.

Certain of said containers and advertising matter also bore, and now bear, the words "laundered soft" or "laundered soft finish."

The statements hereinabove set out serve as representations on the part of respondent to customers, prospective customers and to the public generally, that respondent is a manufacturer of handkerchiefs; that it operates factories at Passaic, N. J., and Ellenville, N. Y., or elsewhere; that it is the largest manufacturer of packaged handkerchiefs in the United States; that it is the world's largest maker of one quality handkerchiefs, and that the handkerchiefs sold by it are laundered before packaging for resale.

PAR. 5. Respondent did not, and does not, own a factory, nor does it operate or control any factories producing or manufacturing handkerchiefs. Respondent purchases cotton cloth from various cotton textile factories, which cloth it then delivers to certain handkerchief manufacturers who manufacture said cloth into handkerchiefs according to specifications submitted by respondent as to splitting, cutting, the number of stitches making the hem, and dampening. The finished handkerchiefs thus delivered to the respondent by the manufacturers are then packaged by respondent in its own place of business, for resale and shipment to jobbers of dry goods, in various parts of the United States.

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

PAR. 7. There are, among respondent's competitors, many vendors and distributors of packaged handkerchiefs who do not manufacture the handkerchiefs sold by them, and who do not in any way represent that they are the manufacturers thereof, and who do not represent themselves to be the largest manufacturers of packaged handkerchiefs in the United States, and the world's largest makers of one quality handkerchiefs, and that their handkerchiefs are laundered before packaging.

PAR. 8. The misleading and deceptive representations made by the respondent as set out herein 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 representations are true. As a consequence of such mistaken and erroneous beliefs, induced as aforesaid, a substantial number of the public have purchased a considerable volume of the handkerchiefs sold by the respondent with the result that trade has been unfairly diverted to the respondent from its competitors also engaged in the business of selling and distributing handkerchiefs, who truthfully advertise and represent the nature and character of their business.

CONCLUSION

The aforesaid acts and practices of the respondent, Universal Handkerchief Mfg. Co., Inc., are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair

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methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the agreed stipulation of facts entered into between the respondent herein, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Universal Handkerchief Mfg. Co., Inc., a corporation, its agents, representatives, and employees in connection with the sale or offering for sale of handkerchiefs in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the letters "Mfg." in its corporate or trade name, or through the use of any words or terms of similar import or meaning, or through any other means or device, or in any other manner, that said respondent is the manufacturer of the products sold by it, unless or until such time as said respondent actually owns, operates, or directly and absolutely controls a manufacturing plant wherein said products are manufactured by it.

2. Representing that the handkerchiefs sold and distributed by respondent are "laundered soft" or "laundered soft finish" until and unless the handkerchiefs sold and distributed by respondent are in fact laundered.

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

IN THE MATTER OF
NELLE K. WING, TRADING AS THE DEPEW CHEMICAL
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3350. Complaint, Mar. 4, 1938—Decision, Apr. 25, 1938

Where an individual engaged in distribution and sale of certain preparations for the eye, under designation "Sano-See A" and "Sano-See B," or "Doctor DePew's Famous Eye Prescription"; in advertising same in newspapers, periodicals, and trade journals of general circulation throughout the United States, and through printed matter, advertising folders, letters, and literature circulated to customers and prospective customers throughout the several States—

(a) Represented that said preparations would preserve or improve eyesight and keep the eyes in a clean or healthy condition, and that they might be safely used by everyone, through such statements as "* * * promotes the circulation of the blood," "* * * an eye treatment and should not be compared with eye washes," "* * * occasional use * * * will keep the eyes in a clean, healthy condition," etc., "Every member of the family may safely use," etc., "The best known home treatment for almost all eye complaints"; and

(b) Represented that said preparations were remedies or competent and effective treatments for or would cure or promote the cure of ulcer of the cornea, trachoma, dimmed vision, spots before the eyes, and a number of others; Facts being that the two products involved, long known to science in the treatment of mild cases of inflammation of the eye, when not caused by or associated with any systemic or diseased condition, would not improve or preserve eyesight and were not beneficial in treatment of all or any of the diseases, ailments, afflictions, and conditions named, but might actually aggravate same and cause permanent injury, and through their tendency to improve, temporarily, inflamed appearance without actually affecting causes thereof, bring about dangerous delay in the prompt consultation of an oculist for treatment of a serious disease;

With tendency and capacity to mislead substantial portion of purchasing public into erroneous belief that said representations were true, and that said products would in truth accomplish results claimed, and with effect of thereby inducing a number of the purchasing public to buy substantial volume of said products, and of unfairly diverting trade from competitors, many of whom manufacture, distribute, and sell various products designed, intended, and sold to cure, relieve, or treat various diseases, ailments, etc., of the human eye, as hereinabove set forth, and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used;

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

Mr. Gerard A. Rault for the Commission.