

Complaint

IN THE MATTER OF

LOUIS A. BURD AND ABRAM BURD, DOING BUSINESS AS
BURD KNITTING MILLS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3015. Complaint, Dec. 15, 1936—Decision, Aug. 10, 1938*

Where two partners engaged in the sale and distribution of hosiery—

Included words "Knitting Mills" in their firm name, under which they carried on their business, and also used word "Manufacturers" in phrase Hosiery Manufacturers," in conjunction with or separate from their aforesaid trade name, and in describing their said business, and made use of said trade name and phrase in soliciting their said products, and displayed said name and phrase in letterheads, billheads, business cards, circulars, advertising matter, and in telephone and trade directories and otherwise, notwithstanding fact they did not manufacture such hosiery, and neither operated nor directly nor absolutely controlled any mill or factory wherein the products sold by them were made, but filled orders with products made in factories or mills which they did not own, operate, or control;

With tendency and capacity to mislead and deceive purchasers by causing them to believe that they actually owned and operated, or directly and absolutely controlled, factory or mill in which the products sold by them were made, or that they themselves made the same, and to purchase their said products on account of such beliefs and in the belief that in buying direct from the mill a saving of the middleman's profit might be obtained and a more uniform line of goods be purchased, and that, in the matter of contract, more reliance could be placed on the manufacturer or operator than on one who was not, and that dealing with former was preferable and of greater advantage to the purchaser than dealing with someone who was not, and unfairly to divert trade to them thereby from those who truthfully advertise and represent their products and who in fact manufacture products similar to theirs, and from those who do not manufacture similar or like products:

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

Mr. Wm. T. Chantland for the Commission.

Fox, Rothschild, O'Brien & Frankel, of Philadelphia, Pa., for respondents.

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 Louis A. Burd and Abram Burd, copartners, hereinafter referred to as respondents, have been and are using unfair methods of competition in com-

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merce, 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. Respondents are Louis A. Burd and Abram Burd, copartners, who have been since in or about 1926, and are now, doing business as "Burd Knitting Mills Co.," with their principal place of business at 112-120 North Twelfth Street, Philadelphia, Pa. They are, and for more than 9 years last past have been, engaged in the sale and distribution of hosiery in commerce between and among the various States of the United States. They cause said products, when sold, to be shipped from their place of business in the State of Pennsylvania or other State of origin to purchasers thereof located in various States of the United States other than the State of Pennsylvania or other State of origin of the shipment. In the course and conduct of their business respondents have been at all times referred to herein, and are now, in competition with corporations, individuals, firms, and other partnerships likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of their said business as described herein, said respondents have included within their firm name under which to carry on their business the words "Knitting Mills." Respondents have also used the words "Manufacturers" within the phrase "Hosiery Manufacturers," in conjunction with or separate from their said trade name, with which to describe their said business. Respondents have used continuously since in or about 1926, and are now using said trade name containing the said words "Knitting Mills," and have likewise used the words "Hosiery Manufacturers," in soliciting the sale of and selling their products in commerce as hereinabove described. Respondents have caused their said trade name "Burd Knitting Mills Company," and the words "Hosiery Manufacturers" to appear on their letterheads, billheads, business cards, circulars, advertising matter, in telephone and trade directories, and otherwise. All of said printed matter has been, and is, distributed in and among the various States to customers and prospective customers of the respondents. Such statements and designations serve as representations that respondents own, operate, or control the factory or mill wherein the products which they sell are manufactured.

In truth and in fact the said respondents do not make or manufacture the products sold by them, nor have they ever made or manufactured said products. They do not own or operate or directly and

absolutely control any mill or factory wherein the products sold by them are made or manufactured. Respondents have at all times herein referred to filled, and now fill, orders received by them with products made or manufactured in a factory or mill which they do not own, operate, or control.

PAR. 3. There is a preference on the part of certain purchasers or prospective purchasers, located in different States of the United States, for products similar to those sold by respondents to be resold by retail to the public, for buying directly from the manufacturer or mill producing said products. There is an impression and belief existing among certain of said purchasers or prospective purchasers of hosiery that a saving of the middleman's profit may be obtained, that a more uniform line of goods may be purchased, and that an advantage is obtained by purchasing goods directly from a manufacturer or a mill operator. Said purchasers or prospective purchasers also believe that more reliance can be placed on a manufacturer or mill operator with regard to the carrying out of contracts than can be placed upon one not a manufacturer or mill operator, and that dealing with a manufacturer or mill operator is preferable, and more advantageous to the purchaser, than is dealing with one not a manufacturer or mill operator.

The use by the respondents of the words "Knitting Mills" and "Hosiery Manufacturers," as described hereinabove, has a tendency and capacity to mislead and deceive purchasers by causing them to believe that respondents actually own and operate or directly and absolutely control the factory or mill in which the products sold by respondents are made or manufactured, or that respondents themselves make or manufacture their products, and to purchase respondents' products on account of such beliefs. The aforesaid representations by respondents have a tendency and capacity unfairly to divert trade to respondents from corporations, associations, individuals, firms, and other partnerships who are actually manufacturing products similar to the products of respondents, or who do not manufacture similar or like products to those of respondents, both of which classes sell their respective products in commerce among and between the various States of the United States, and who truthfully advertise and label their products and who do not represent themselves to be manufacturers or mill operators when they are not such in fact.

PAR. 4. The acts, practices, and representations of the respondents hereinabove set forth have been and are to the injury and prejudice of the public and of the competitors of the respondents in interstate commerce, and have constituted and now constitute unfair methods of

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competition 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 the Federal Trade Commission Act, the Federal Trade Commission on the 15th day of December 1936 issued, and on the 17th day of December 1936 served, its complaint in this proceeding upon respondents Louis A. Burd and Abram Burd, doing business as Burd Knitting Mills Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and filing of respondents' answer, the Commission, by order herein, granted respondents' 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 hearing on the charges set forth in the complaint and 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 hearing before the Commission on the said complaint and substitute answer, 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. Respondents Louis A. Burd and Abram Burd are copartners who have been since in or about 1926, and now are, doing business as "Burd Knitting Mills Co.," with their principal place of business at 112-120 North Twelfth Street, Philadelphia, Pa., and now are, and for more than 9 years last past have been, engaged in the sale and distribution of hosiery in commerce between and among the various States of the United States, and cause said products, when sold, to be shipped from their place of business in the State of Pennsylvania or other State of origin to purchasers thereof located in various States of the United States other than the State of Pennsylvania or other than the State of origin of the shipment. At all times referred to herein, in the course and conduct of their business respondents have been, and now are, in competition with corporations, individuals, firms, and other partnerships likewise engaged in the sale and distribution of

similar products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of their said business, respondents have included within their firm name under which they carry on their business the words "Knitting Mills," and have also used the word "Manufacturers" within the phrase "Hosiery Manufacturers," in conjunction with or separate from their said trade name, in describing their said business. Continuously since in or about 1926, respondents have used, and are now using said trade name containing the said words "Knitting Mills," and likewise the words "Hosiery Manufacturers," in soliciting the sale of and selling their products in commerce as above described. Respondents have caused their said trade name "Burd Knitting Mills Co.," and the words "Hosiery Manufacturers" to appear on their letterheads, billheads, business cards, circulars, advertising matter, in telephone and trade directories, and otherwise, and have distributed same in and among the various States to customers and prospective customers of the respondents. Such statements and designations constitute and are representations that respondents own, operate, or control the factory or mill wherein the products which they sell are manufactured, whereas in truth and in fact the said respondents do not make or manufacture the products sold by them, nor have they ever made or manufactured said products, nor do they operate or directly and absolutely control any mill or factory wherein the products sold by them are made or manufactured. Respondents have, at all times herein referred to, filled and now fill, orders received by them with products made or manufactured in factories or mills not owned, operated, or controlled by them.

PAR. 3. There is a preference on the part of certain purchasers and prospective purchasers, located in different States of the United States, for products similar to those sold by respondents to be resold by retail to the public, for buying directly from the manufacturer or mill producing said products, and there is an impression and belief existing among certain of said purchasers or prospective purchasers of hosiery that a saving of the middleman's profit may thereby be obtained, and that a more uniform line of goods may be purchased, and such purchasers or prospective purchasers also believe that more reliance can be placed on a manufacturer or mill operator with regard to the carrying out of contracts than can be placed upon one not a manufacturer or mill operator, and that dealing with a manufacturer or mill operator is preferable, and more advantageous to the purchaser, than is dealing with one who is not a manufacturer or mill operator.

PAR. 4. The use by the respondents of the words "Knitting Mills" and "Hosiery Manufacturers," as described hereinabove, has a tendency and capacity to mislead and deceive purchasers by causing them to believe that respondents actually own and operate or directly and absolutely control the factory or mill in which the products sold by respondents are made or manufactured, or that respondents themselves make or manufacture their products, and to purchase respondents' products on account of such beliefs, and the belief in the advantages accruing therefrom as above described, and as a result thereof, the aforesaid representations by respondents have a tendency and capacity unfairly to divert trade to respondents from corporations, associations, individuals, firms, and other partnerships who truthfully advertise and represent their products, and who in fact manufacture products similar to the products of respondents, and also of those who do not manufacture similar or like products to those of respondents.

CONCLUSION

The aforesaid acts and practices of the respondents, Louis A. Burd and Abram Burd, doing business as Burd Knitting Mills Co., are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of 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 and the answer of respondents, in which answer respondents admit all the material allegations of the complaint to be true and state that they waive hearing on the charges set forth in said complaint, and that, without further evidence or other intervening procedure, the case might proceed to final hearing upon the record, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Louis A. Burd and Abram Burd, doing business as Burd Knitting Mills Co., or under any other trade name, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of hosiery in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, through the use of the words "Knitting Mills" or "Mills," as part of their trade name or otherwise,

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or through the use of the words "Hosiery Manufacturers" or "Manufacturers," either alone or in conjunction with any other word or words, or through any other means or device, or in any manner whatever, that they are the manufacturers or makers of the products which they sell or that they are mill owners or operators, until and unless they actually own and operate, or directly and absolutely control, a plant or mill wherein said products are manufactured or made by them.

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

IN THE MATTER OF
MELVIN HINER, TRADING AS COOPERATIVE LIBRARY
COMPANY

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

Docket 3349. Complaint, Mar. 4, 1938—Decision, Aug. 10, 1938

Where an individual engaged in purchasing for resale and in offering, selling and distributing to the general public a set of reference books or encyclopedia entitled and known as "American Educator Encyclopedia in Ten Volumes," together with a "Ten Years Loose Leaf Service" for use in connection therewith, through personal solicitation and through various agents, salesmen, solicitors, and employees—

- (a) Represented, personally and through verbal statements by his agents, etc., and through his order blanks, prospectuses, and other literature used and distributed and exhibited to prospective purchasers and purchasers, and aided, abetted, assisted, and encouraged his said salesmen and representatives, through placing in their hands order blanks and other trade literature with instructions to exhibit, distribute, and use the same in selling and soliciting such books and services, to represent that the selling price of the reference books was \$9.50, but that, as a special introductory offer for advertising purposes, a limited number of persons were being offered a set thereof free of charge, or at a nominal price, if they subscribed for the loose-leaf extension service for a period of 10 years at price of \$5 a year, facts being such books were regularly sold for \$59.50, of which \$9.50 was down payment therefor, with balance payable \$5 a month for the succeeding 10 months, and price at which books were sold was not a special price and they were not given away free or at a nominal price for advertising or as a special introductory offer, or to a limited number of people, and regular and usual price was available to anyone who could be induced to purchase the same;
- (b) Represented, as aforesaid, and aided, abetted, assisted, and encouraged his salesmen, etc., in representing that the subscriber would be credited with \$5 for each set of reference books sold in the community in which he resided, and that the books would be sent out for approval, and that the subscriber would receive an additional book or copy each year for the succeeding 10 years to accommodate the loose leaf extension service, so that at the end of said period set would be increased to a total of 20 books, facts being subscriber was not thus credited, books were not sent out for approval, but contract or order blank signed by subscriber was unconditional and not subject to cancellation, and acceptance of books returned by dissatisfied subscriber was invariably refused, and no additional books were sent out as above set forth;
- (c) Represented, as aforesaid, and aided, abetted, assisted, and encouraged his salesmen, etc., in representing, that his said reference books had been recommended by the local county school superintendent or by the American Library Association or by the immediate superior of the subscriber, and that they