

Syllabus

IN THE MATTER OF

HYMAN KADETSKY, TRADING AS ACME MERCHANDISE
COMPANY, AND LIQUIDATION MERCHANDISE COM-
PANY

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

Docket 3442. Complaint, May 24, 1938—Decision, Aug. 31, 1938

Where an individual engaged in the sale of new and secondhand clothing and other merchandise to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such merchandise in commerce among the various States and in aforesaid District, and including many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their products and the nature of their business and business methods; in advertising his said goods in newspapers, periodicals, pamphlets, testimonials, letters, and catalogs circulated among the various States and in said District—

- (a) Represented that he filled orders promptly and shipped kinds of merchandise described in his catalog, and that single garments might be obtained from him in all sizes, colors, and styles, and that he led all other merchants in values and his customers got best merchandise on the market;
- (b) Represented that his new merchandise was of the latest style, and that his slightly used goods were always cleaned, pressed, and repaired before shipment, and that his experts carefully selected assorted quality merchandise, and that he would replace any merchandise that was not satisfactory, and that his customers were assured of satisfaction; and
- (c) Represented that he was able to purchase large bankrupt stocks, close-out stocks, auction stocks, and manufacturers' samples direct from the source of supply, and thereby sell at low price, and invited prospective salesmen, solicited as aforesaid, to "Stop Working For Others" and "Get into this big pay business that is better right now than ever before," and represented that an agent could make 500 percent profit by reselling his merchandise;

Facts being aforesaid representations were grossly exaggerated, deceptive, false, and misleading, stock dealt in by him as aforesaid was bought on the open market from wholesale clothing merchants and junk dealers, and substantial amount thereof was old, out of style, shop-worn, dirty, worn out, valueless, and of different quality, age, color, style, and condition from that ordered by customers, shipments to fill orders were frequently made month or more after receipt of purchase price and not promptly nor as described in catalogs, single garments could not be obtained as aforesaid represented nor any new merchandise of latest style, slightly used products were not always cleaned, etc., as above set forth, nor unsatisfactory goods returned, replaced, no such selection was made by experts nor did he have large capital with which to make such purchases as aforesaid described, and sell at low price, nor did he so sell or purchase such stock and samples

Complaint

27 F. T. C.

at low price, nor lead other merchants in values, his agents could not make such profit through resale of his goods, nor did his customers get best merchandise on market, nor were they assured of satisfaction;

With effect of misleading and deceiving members of purchasing public into mistaken and erroneous belief that said representations were true, and with result that such public, as a direct consequence of said false, deceptive, and misleading representations and erroneous and mistaken beliefs thus induced, bought substantial amount of merchandise from him, and substantial trade was diverted unfairly to him from competitors engaged in sale of clothing and merchandise, and who truthfully advertise and represent value, quality, age, color, size, style, and cleanliness of their products:

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

Before *Mr. E. J. Hornibrook*, trial examiner.

Mr. R. A. McQuat for the Commission.

Hickey, Hall & Jungé, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Hyman Kadetsky, an individual trading under the names of Acme Merchandise Co., and Liquidation Merchandise Co., hereinafter referred to as respondent, has violated the provisions of 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, Hyman Kadetsky, is an individual trading under the names of Acme Merchandise Co., and Liquidation Merchandise Co., and is now, and has been for more than 2 years last past, engaged in the business of selling new and second-hand clothing and other merchandise. Respondent's office and place of business is located at 1219 South Jefferson Street, in the city of Chicago, State of Illinois. Respondent causes said merchandise when sold to be shipped or transported from his aforesaid place of business in the city of Chicago, State of Illinois, to the purchasers thereof at their respective places of location in States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said merchandise, so sold by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is, and at all times herein mentioned has been, in substantial competition with other individuals and with firms, partnerships and corporations engaged in the sale and distribution of similar merchandise in commerce between and among the various States of the United States and in the District of Columbia. Among the competitors of the respondent in said commerce are many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise, and who truthfully represent the nature of their business and their business methods.

PAR. 3. In the course of his said business, as hereinabove described, and for the purpose of inducing the purchase of his merchandise, respondent has made extravagant, deceptive, false, and misleading statements concerning his business methods and concerning the value, quality, age, color, size, style, and cleanliness of his merchandise. Said statements and representations are made by means of advertisements inserted in newspapers, magazines, pamphlets, testimonials, letters, and catalogs, all circulated between and among the various States of the United States and in the District of Columbia. Among many, the following are typical examples of said advertisements:

How are we able to quote such low prices?

By the enormous purchasing power of our Cash Plan that permits us to secure exceptional values in new and slightly used wearing apparel in Bankrupt Stocks, Close-Out Stocks, and Auction Stocks.

Stop Working For Others. Get into this big pay business that is better right now, than ever before. Fill your order blank and mail to us * * * Quick! Your order will be filled with care and shipped promptly.

We guarantee to replace any merchandise returned to us within five days that is not satisfactory.

Through the efforts of our best Experts we have selected a group of assorted quality merchandise at a very reasonable price.

Acme leads all with Values.

We have searched the markets of the nation for outstanding values which practically guarantee your success.

Late styles in Ladies Brand new Silk Dresses

Popular Models

Best Quality Silk

\$18.00 per doz.—\$1.55 each

24.00 per doz.— 2.05 each

These are truly wonderful values. Smart, good looking, real silk dresses that will please every woman who must economize. The colors are right. The styles are right.

Bargains in Women's Returned Suits.

Suits

\$12.00 per doz. \$15.00 per doz.

1.00 each 1.25 each

Complaint

27 F. T. C.

Suits are going to be mighty popular this fall and this is a sure chance for you to cash in on big profits. Materials are very good. Styles are quite late. Each garment is nicely pressed, cleaned and repaired.

Amazing values in men's tailored pants. Assorted sizes in a cheap, fast-selling pant on which you can clean-up. 34¢ each.

Don't miss these amazing bargains * * * New Merchandise * * * Slightly used merchandise * * * Drugs and sundries.

All of said statements, together with other similar statements and representations appearing in respondent's advertising literature, but not set out herein, purport to be descriptive of respondent's merchandise and his business methods. In all of his advertising literature and through other means respondent represents that he fills orders promptly and that he ships the kind of merchandise described in his catalog; that single garments may be obtained from him in all sizes, colors, and styles; that his new merchandise is of the latest style; that his slightly used merchandise is always cleaned, pressed and repaired before shipment; that he guarantees to replace any merchandise that is not satisfactory; that his experts carefully select assorted quality merchandise and that because of his large capital he is able to purchase large bankrupt stocks, close-out stocks, auction stocks and manufacturers' samples direct from the source of supply and thus sell at a low price; that he leads all other merchants in values and that an agent can make 500 percent profit by reselling his merchandise; that his customers get the best merchandise on the market and are assured of satisfaction.

PAR. 4. The said representations made by respondent are grossly exaggerated, deceptive, false, and misleading. In truth and in fact respondent does not fill orders promptly, nor does he ship the kind of merchandise described in his catalog. Single garments cannot be obtained from him in all sizes, colors, and styles. His new merchandise is not of the latest style nor is his used merchandise always cleaned, pressed, and repaired before shipment to customers. Respondent does not replace merchandise which is returned as unsatisfactory. No experts select his merchandise nor has he a large capital with which to purchase large bankrupt stocks, close-out stocks, auction stocks, and manufacturers' samples direct from the source of supply and sell at a low price, and he does not purchase such stocks and samples and sell at a low price. Respondent does not lead all other merchants in values nor can agents make 500 percent profit by reselling his merchandise. His customers do not get the best merchandise on the market and cannot be assured of satisfaction.

The true facts are the respondent buys his stock of merchandise on the open market from wholesale clothing merchants and junk dealers. Frequently respondent ships merchandise to fill his orders a month

or more after he receives the purchase price. A substantial amount of said shipments contain merchandise that is old, out of style, shop-worn, dirty, worn-out, valueless, and of a different color, age, quality, style, and condition from the merchandise ordered by his customers.

PAR. 5. The false and misleading representations used by the respondent, set forth herein, in connection with the sale of his merchandise have the capacity and tendency to and do mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true. As a direct consequence of the false, deceptive, and misleading representations of the respondent, and the erroneous and mistaken beliefs induced thereby, the purchasing public has purchased a substantial amount of merchandise from the respondent with the result that substantial trade in said commerce has been diverted unfairly to the respondent from competitors engaged in the business of selling clothing and merchandise who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise. As a result thereof, injury has been and is now being done by the respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, 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 the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 24th day of May A. D. 1938, issued, and on May 26, 1938, served its complaint in this proceeding upon the respondent, Hyman Kadetsky, trading under the names of Acme Merchandise Co., and Liquidation Merchandise Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 26, 1938, the respondent filed his answer, in which answer, he admitted all the material allegations of fact set forth in said complaint to be true and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, 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. Respondent, Hyman Kadetsky, is an individual trading under the names of Acme Merchandise Co. and Liquidation Merchandise Co., and is now and has been for more than 2 years last past engaged in the business of selling new and second-hand clothing and other merchandise. Respondent's office and place of business is located at 1219 South Jefferson Street, in the city of Chicago, State of Illinois. Respondent causes said merchandise when sold to be shipped or transported from his aforesaid place of business in the city of Chicago, State of Illinois, to the purchasers thereof at their respective places of location in States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said merchandise so sold by him in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is, and at all times herein mentioned has been, in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of similar merchandise in commerce between and among the various States of the United States and in the District of Columbia. Among the competitors of the respondent in said commerce are many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise, and who truthfully represent the nature of their business and their business methods.

PAR. 3. In the course of his said business, as hereinabove described, and for the purpose of inducing the purchase of his merchandise, respondent has made extravagant, deceptive, false, and misleading statements concerning his business methods and concerning the value, quality, age, color, size, style, and cleanliness of his merchandise. Said statements and representations are made by means of advertisements inserted in newspapers, magazines, pamphlets, testimonials, letters, and catalogues, all circulated between and among the various States of the United States and in the District of Columbia. Among many, the following are typical examples of said advertisements:

How are we able to quote such low prices?

By the enormous purchasing power of our Cash Plan that permits us to secure exceptional values in new and slightly used wearing apparel in Bankrupt Stocks, Close-Out Stocks, and Auction Stocks.

STOP WORKING FOR OTHERS. Get into this big pay business that is better right now than ever before. Fill your order blank and mail to us * * * QUICK! Your order will be filled with care and shipped promptly.

865

Findings

We guarantee to replace any merchandise returned to us within five days that is not satisfactory.

Through the efforts of our best Experts we have selected a group of assorted quality merchandise at a very reasonable price.

Acme leads all with Values.

We have searched the markets of the nation for outstanding values which practically guarantee your success.

Late styles in Ladies Brand new Silk Dresses.

Popular Models
Best Quality Silk
\$18.00 per doz.—\$1.55 each
24.00 per doz.—2.05 each

These are truly wonderful values. Smart, good looking, real silk dresses that will please every woman who must economize. The colors are right. The styles are right.

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Suits are going to be mighty popular this fall and this is a sure chance for you to cash in on big profits. Materials are very good. Styles are quite late. Each garment is nicely pressed, cleaned and repaired.

Amazing values in men's tailored pants. Assorted sizes in a cheap, fast-selling pant on which you can clean-up. 34¢ each.

Don't miss these amazing bargains * * * New merchandise * * * Slightly used merchandise * * * Drugs and sundries.

All of said statements, together with other similar statements and representations appearing in respondent's advertising literature, but not set out herein, purport to be descriptive of respondent's merchandise and his business methods. In all of his advertising literature and through other means, respondent represents that he fills orders promptly and that he ships the kind of merchandise described in his catalogue; that single garments may be obtained from him in all sizes, colors, and styles; that his new merchandise is of the latest style; that his slightly used merchandise is always cleaned, pressed and repaired before shipment; that he guarantees to replace any merchandise that is not satisfactory; that his experts carefully select assorted quality merchandise and that because of his large capital he is able to purchase large bankrupt stocks, close-out stocks, auction stocks, and manufacturers' samples direct from the source of supply and thus sell at a low price; that he leads all other merchants in values and that an agent can make 500 percent profit by reselling his merchandise; that his customers get the best merchandise on the market and are assured of satisfaction.

PAR. 4. The said representations made by the respondent are grossly exaggerated, deceptive, false, and misleading. In truth and in fact

Conclusion

27 F. T. C.

respondent does not fill orders promptly, nor does he ship the kind of merchandise described in his catalogue. Single garments cannot be obtained from him in all sizes, colors and styles. His new merchandise is not of the latest style nor is his slightly used merchandise always cleaned, pressed and repaired before shipment to customers. Respondent does not replace merchandise which is returned as unsatisfactory. No experts select his merchandise nor has he a large capital with which to purchase large bankrupt stocks, close-out stocks, auction stocks, and manufacturers' samples direct from the source of supply and sell at a low price, and he does not purchase such stocks and samples and sell at a low price. Respondent does not lead all other merchants in values nor can agents make 500 percent profit by reselling his merchandise. His customers do not get the best merchandise on the market and cannot be assuaged of satisfaction.

The true facts are that the respondent buys his stock of merchandise on the open market from wholesale clothing merchants and junk dealers. Frequently respondent ships merchandise to fill his orders a month or more after he receives the purchase price. A substantial amount of said shipments contain merchandise that is old, out of style, shop-worn, dirty, worn-out, valueless, and of a different quality, age, color, style, and condition from the merchandise ordered by his customers.

PAR. 5. The false and misleading representations used by the respondent, set forth herein, in connection with the sale of his merchandise have the capacity and tendency to and do mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true. As a direct consequence of the false, deceptive, and misleading representations of the respondent and the erroneous and mistaken beliefs induced thereby, the purchasing public has purchased a substantial amount of merchandise from the respondent with the result that substantial trade in said commerce has been diverted unfairly to the respondent from competitors engaged in the business of selling clothing and merchandise who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and of respondent's 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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure, and further hearings as to said facts, 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, Hyman Kadetsky, trading under the names of Acme Merchandise Co., and Liquidation Merchandise Co., or trading under any other name, his representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale and distribution of his merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That he fills orders promptly and that he ships the kind of merchandise described in his catalog, when such is not the fact;

2. That single garments may be obtained from him in all sizes, colors, and styles, when such is not the fact;

3. That his new merchandise is of the latest style, when such is not the fact;

4. That his slightly used merchandise is always cleaned, pressed, and repaired before shipment, when such is not the fact;

5. That he will replace any merchandise that is not satisfactory, when such is not the fact;

6. That his experts carefully select assorted quality merchandise and that he is able to purchase large bankrupt stocks, close-out stocks, auction stocks, and manufacturers' samples direct from the source of supply and thus sell at a low price, when such is not the fact;

7. That salesmen of respondent's merchandise can make any profit in excess of the usual and customary profits earned by other salesmen of his merchandise under normal conditions and in the due course of business;

8. That he leads all other merchants in values and that his customers get the best merchandise on the market and are assured of satisfaction.

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.

IN THE MATTER OF
GUM, INCORPORATED

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

Docket 3467. Complaint, June 22, 1938—Decision, Aug. 31, 1938

Where a corporation engaged in manufacture and sale of assortments of chewing gum which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which included assortments composed of large number of pieces of gum, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received for penny paid pieces of gum ranging in number from 1 to 20, in accordance with particular number pushed by chance, and last sale in each of first 3 sections of card received 5 pieces, and last sale received 15, and other assortments involving lottery or chance feature similar to aforesaid, from which they varied in detail only—

Sold to retailers for display and resale to purchasing public, in accordance with aforesaid sales plans, such assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said products in accordance with such plans, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who, unwilling to offer and sell gum or other confections so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance, or any other method of sale contrary to public policy, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said product in preference to gum or other confections offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of such products were attracted by its said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and thereby induced to buy its said gum, thus packed and sold by it, in preference to gum or other confections offered and sold by said competitors who do not use same or equivalent or similar method, and with tendency and capacity, because of said game of chance, to divert to it trade and customers from its said competitors as aforesaid, exclude from chewing gum and confection trade all competitors who are unwilling to and do not use such or equivalent or similar method as unlawful, lessen competition in said trade, and create monopoly thereof in it and such other distributors of such products as use same or equivalent methods, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual and exclude therefrom all potential competitors who do not adopt and use such or equivalent methods:

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