

Syllabus

IN THE MATTER OF

LOUIS COHEN, ALSO KNOWN AS LOUIS KAHN, TRADING
AS NATIONAL GUARD EQUIPMENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3588. Complaint, Sept. 15, 1938—Decision, Feb. 23, 1939*

Where an individual engaged in sale and distribution of general merchandise, which included articles similar in make and design to those which the United States Government requires personnel of its National Guard and other military units to wear, and, as thus engaged, in selling its goods to purchasers in other States and in the District of Columbia, in substantial competition with those engaged in similar sale and distribution of merchandise, and including those engaged in sale and distribution of merchandise similar in character and design to that sold by said individual who do not, in their trade or corporate names or in their advertising or in any manner, import or imply any connection or association with any military organization of the United States Government when they are not in fact so connected or associated;

Operated under trade name "National Guard Equipment Company," and made use of said name in his catalogs, order blanks, and other printed advertising matter circulated among prospective customers, notwithstanding fact none of his stock of merchandise was purchased from the United States War Department and no substantial part thereof was made for said Department for use by the National Guard, but great majority of his merchandise consisted of usual stock found generally in general merchandise establishments and was purchased from usual marts of trade and not from said Department, and small amount of Army goods in said stock, if any, was bought from jobbers, wholesalers, and others who buy at Army departmental refuse and reject goods sales, and he was in no way connected with said Department and had no affiliation, association, agreement, or connection therewith or with National Guard division thereof;

With result that purchasers and prospective purchasers were led to believe that his stock was made for or purchased from the War Department, and of causing members of purchasing public to believe that he was connected therewith for the merchandising of equipment made for or purchased from the National Guard division thereof, and that he operated and maintained an establishment connected with said Department for the merchandising of official National Guard equipment, and with tendency and capacity to mislead and deceive substantial portion of such public into erroneous and mistaken belief that his merchandise was made for or purchased from the War Department and that he was connected or associated therewith or with the National Guard as aforesaid for the merchandising of equipment made for or purchased from it, and with result, as a consequence of such

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mistaken and erroneous belief induced by his said representations, that number of the purchasing public bought substantial quantity of his said merchandise:

Held, That such acts and practices were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Mr. David Justin, of New York City, 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 Louis Cohen, also known as Louis Kahn, an individual trading as National Guard Equipment Co., hereinafter referred to as respondent, has violated the provisions of the 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, Louis Cohen, also known as Louis Kahn, is an individual trading as National Guard Equipment Co., and has his principal office and place of business at 155 East Thirty-Fourth Street, in the city of New York and State of New York. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of general merchandise into and through the various States of the United States and in the District of Columbia. Respondent causes said merchandise, when sold, to be transported from his place of business in New York, N. Y., to purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. Respondent, at all times herein mentioned, has maintained a constant current of trade in said merchandise in said commerce.

PAR. 2. In the course and conduct of his business respondent is in substantial competition with other individuals and with firms, co-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.

PAR. 3. At all times herein named respondent has operated under the trade name National Guard Equipment Co. Said name is used in catalogs, order blanks, and other printed matter circulated among prospective purchasers. By the use of said trade name purchasers and prospective purchasers are led to believe that the stock of mer-

chandise offered for sale to the purchasing public by said respondent was made for or purchased from the United States Department of War. The use by the respondent of the words "National Guard Equipment Company" in the manner herein described has the tendency and capacity to, and does, cause members of the purchasing public to believe that the respondent is, in some manner, connected with the United States Department of War for the merchandising of equipment manufactured for or purchased from the National Guard Division of such Department.

In truth and in fact none of the stock of merchandise of said respondent is or was purchased from the United States Department of War, nor is any substantial part of said stock of merchandise made for the United States Department of War for use by the National Guard. The small amount of Army goods in said stock of merchandise, if any, is bought from jobbers, wholesalers, and others who buy at Army departmental refuse and reject goods sales. The great majority of respondent's stock of merchandise consists of the usual stock found generally in general mercantile establishments and is purchased in the usual marts of the trade and not from the United States Department of War. Respondent is in no way connected with the United States Department of War, and has no affiliation, association, agreement, or any connection with such Department or the National Guard Division of such Department.

PAR. 4. Among the articles of merchandise offered for sale and sold by respondent in interstate commerce, as aforesaid, are those articles similar in make and design to those required by the United States Government to be worn by the personnel of its National Guard and other military units.

PAR. 5. There are among the competitors of the respondent described in paragraph 2 hereof individuals, firms, copartnerships, and corporations engaged in the sale and distribution in said commerce of general merchandise similar in character and design to that merchandise vended by respondent, who do not in their trade or corporate names, in their advertising or in any manner, import or imply a connection or association with any military organization of the United States Government, when they are not in fact so connected or associated.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair methods of competition and unfair and deceptive acts and practices 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 September 15, 1938, issued, and on September 17, 1938, served, its complaint in this proceeding upon respondent, Louis Cohen, also known as Louis Kahn, an individual trading as National Guard Equipment Co., charging him with the use of unfair methods of competition and unfair and deceptive acts and practices 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission under date of December 8, 1938. Thereafter, this proceeding regularly came on for final 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. The respondent, Louis Cohen, also known as Louis Kahn, is an individual trading and doing business under the name and style of National Guard Equipment Co., with its principal office and place of business at 155 East Thirty-fourth Street in the city of New York, and State of New York. Respondent is now and has been for more than 1 year last past engaged in the sale and distribution of general merchandise into and through various States of the United States and in the District of Columbia. Respondent causes said merchandise, when sold, to be transported from his place of business in New York, N. Y., to purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. Respondent, at all times herein mentioned, has maintained a course of trade in said merchandise in said commerce.

PAR. 2. In the course and conduct of his aforesaid business, respondent is in substantial competition with other individuals and with firms, copartnerships, and corporations also engaged in the sale and distribution of some of the merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. For more than 1 year last past the respondent has operated under the trade name National Guard Equipment Co. Said trade name is used in respondent's catalogs, order blanks, and other printed advertising matter circulated among prospective customers. By the use of said trade name containing the term "National Guard," purchasers and prospective purchasers are led to believe the stock of merchandise offered for sale to the purchasing public by said respondent was made for or purchased from the United States War Department. The use by the respondent of the trade name containing the term "National Guard," in the manner herein described, has the tendency and capacity, and does, cause members of the purchasing public to believe that the respondent is connected with the United States War Department for the merchandising of equipment manufactured for or purchased from the National Guard Division of the War Department, and that the respondent operates and maintains an establishment connected with the United States War Department for the merchandising of official National Guard equipment.

In truth and in fact none of the stock of merchandise of said respondent was purchased from the United States War Department and no substantial part of said stock of merchandise was made for the United States War Department for use by the National Guard. The great majority of respondent's stock of merchandise consists of the usual stock found generally in general merchantile establishments and is purchased from the usual marts of trade and not from the United States War Department. A small amount of Army goods in said stock of merchandise, if any, is bought from jobbers, wholesalers, and others who buy at Army departmental refuse and reject goods sales. Respondent is in no way connected with the United States War Department and has no affiliation, association, agreement, or any connection with the War Department or the National Guard Division of the War Department.

PAR. 4. Among the articles of merchandise offered for sale and sold by respondent in commerce among and between the various States of the United States are certain articles similar in make and design to those which the United States Government requires the personnel of its National Guard and other military units to wear.

PAR. 5. There are among the competitors of the respondent herein described certain individuals, firms, copartnerships, and corporations engaged in the sale and distribution in commerce among and between the various States of the United States of merchandise similar in character and design to that sold by the respondent, who do not in their trade or corporate names, or in their advertising, or in any manner, import or imply any connection or association with any

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military organization of the United States Government when they are not in fact so connected or associated.

PAR. 6. The representations made by the respondent through use of the term "National Guard" in his trade name are calculated to, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the respondent's merchandise was made for or purchased from the United States War Department and that the respondent is connected with or associated with the United States War Department or the National Guard for the merchandising of equipment manufactured for or purchased from the National Guard. As a consequence of such mistaken and erroneous beliefs, induced by the respondent's representations herein described, a number of the purchasing public have purchased a substantial quantity of said merchandise.

CONCLUSION

The aforesaid acts and practices of the respondent, Louis Cohen, also known as Louis Kahn, an individual trading under the style and name of National Guard Equipment Co., have been, and are, to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 hearing 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, Louis Cohen, also known as Louis Kahn, an individual, trading as National Guard Equipment Co., his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of general merchandise, wearing apparel, and military equipment, uniforms and supplies in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing through the use of the term "National Guard" in his trade name, or through any other means or device, or in any manner

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that respondent's business is a branch of, or affiliated with, the United States War Department or National Guard or in any way connected or associated therewith or that respondent's merchandise was made for, or purchased from, the United States War Department or National Guard, provided that any merchandise actually purchased at War Department surplus, refuse or reject sales may be so represented.

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
CHARLES H. BACON COMPANY AND SCOTT-BARTELS
COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC.
3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2087. Complaint, Feb. 21, 1935²—Decision, Feb. 24, 1939

Where a corporation engaged in manufacture and sale of hosiery, and a second company engaged as exclusive selling agent thereof in soliciting and procuring orders for such hosiery and, as thus engaged, in substantial competition in commerce among the various States and in the District of Columbia with others engaged in sale and distribution of hosiery, including many who do not represent, brand, label, advertise, or describe their said product falsely or deceptively, and do not represent that it contains more silk than is in fact present—

Made use of words "PURE THREAD SILK" in labels, brands, or stamps on their said product, together with such words as "Reinforced with Rayon" or "Reinforced with Artificial Silk" or "Twisted with Rayon," and thereby and otherwise caused said hosiery to be represented, advertised, described, sold, and distributed in the trade and to the consuming public in various States and in said District as containing genuine and pure silk as the principal or major constituent therein, and in a proportion or quantity larger than that of rayon, facts being the tops, heels, soles, and toes of such hosiery, with appearance and feel of silk, were composed wholly of cotton, and other parts thereof were composed of approximately 93 percent rayon, with which was mixed from 3 to 7 percent silk, amounting to 2 percent of the hose by weight;

With the result that they thereby placed in the hands of dealers means or instrument of deception and fraud whereby such dealers were enabled, aided, and assisted in misleading and deceiving members of purchasing public as to contents of said hosiery and quality, value, grade, and substance thereof, and with effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and that such product contained pure or genuine silk in a larger proportion than was in fact present therein, and in a larger proportion than rayon content thereof, and of causing members of such public, because of such erroneous and mistaken belief, to purchase quantities thereof, and of thereby diverting unfairly trade to them from their competitors in commerce who truthfully advertise and represent their respective hosiery and materials contained therein; to the injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. James M. Hammond for the Commission.

Frantz, McConnell & Seymour, of Knoxville, Tenn., for respondents.

¹ Count II of complaint, alleging violation of National Industrial Recovery Act, dismissed.

² Amended and supplemental.