

Complaint

IN THE MATTER OF

JOSEPH SCULLER, INC., AND JOSEPH SCULLER, MRS.
JOSEPH SCULLER AND HAMEL GURWIN, INDIVIDU-
ALLY AND AS OFFICERS OF JOSEPH SCULLER, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3701. Complaint, Feb. 7, 1939—Decision, Mar. 22, 1939*

Where a corporation, and three officers thereof who formulated, controlled, and directed its policies, acts, and practices and acted together and in cooperation with one another in such acts and practices as below described, engaged in selling and distributing watches, rings, diamonds, and a variety of jewelry and gift articles at wholesale and retail—

Represented, through use of word "Manufacturing" in phrase "Manufacturing Jeweler Wholesale," displayed with trade name employed by them on letter-heads, invoices, and other printed matter for distribution by traveling salesmen and otherwise to customers and prospective customers in other States, that they owned, operated, or controlled plant or factory wherein, or machinery whereby, articles sold by them were made or manufactured;

Facts being they did not own, operate, or control, and had not thus owned, operated, or controlled for some time past, plant or machinery for manufacture of the articles sold and distributed by them as above set forth, but filled orders for such articles with products made in plant or factory and by machinery which they neither owned, operated, nor controlled, and they were not manufacturer or plant operator of such articles, for the purchase of which direct there is a preference on part of certain buyers and prospective buyers, as affording, in their belief, saving of middleman's profit, more uniform line of jewelry, and other advantages;

With effect of causing members of purchasing public situated in various States to have erroneous and mistaken belief that they actually owned and operated, or controlled, plants or factories wherein, or machinery whereby, such merchandise was made or manufactured, and into purchase of substantial amounts of their said products by reason thereof:

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

Mr. B. G. Wilson for the Commission.

Mr. E. J. Schanfarber, of Columbus, Ohio, for respondents.

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 Joseph Sculler, Inc., a corporation, and Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin, individuals and officers of Joseph Sculler, Inc., hereinafter

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referred to as respondents, have 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, Joseph Sculler, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business at 35 East Gay Street in the city of Columbus, State of Ohio. Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin are respectively president, vice president, and secretary of said corporate respondent, and have their business offices at the same address of said Joseph Sculler, Inc.

Respondents, Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin, as officers of said corporation, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and things herein-after alleged. Respondents are now, and for some time last past have been, engaged in the business of selling and distributing at wholesale and retail, watches, rings, diamonds, and a variety of jewelry and gift articles in commerce between and among various States of the United States. Respondents cause, and have caused, said articles when sold to be shipped from their aforesaid place of business in Columbus, State of Ohio, to purchasers thereof located in various other States of the United States.

PAR. 2. In the course and conduct of their business as aforesaid, respondents, in soliciting the sale of, and in selling, their products as above described, have caused letterheads, invoices, and other printed matter to be distributed through traveling salesmen and by other means to customers and prospective customers located in States other than the State of Ohio. Said printed matter includes the following:

JOSEPH SCULLER

Manufacturing JEWELER Wholesale

Third Floor 35 East Gay Street

COLUMBUS, OHIO

The use of the word "manufacturing" within the phrase "Manufacturing Jeweler Wholesale" serves as a representation that respondents own, operate, or control the plant or factory wherein, or machinery whereby, the articles they sell are made or manufactured.

PAR. 3. In truth and in fact, respondents do not own, operate, or control, and have not owned, operated, or controlled for some time last past, a plant, factory, or machinery for the manufacture of the

articles, jewelry, or watches they sell and distribute as hereinabove alleged, but respondents have filled, and now fill, orders for such articles of merchandise with products which are made or manufactured in a plant or factory or by machinery which they neither own, operate, nor control.

PAR. 4. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States, for buying said articles and like or similar articles directly from the manufacturer or factory producing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said articles that a saving of the middleman's profit may be obtained; that a more uniform line of jewelry may be purchased, and that other advantages may be obtained by purchasing goods directly from a manufacturer or plant operator.

The use by respondents of the word "manufacturing" within the phrase "Manufacturing Jeweler Wholesale" as hereinabove alleged, has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers by causing them to mistakenly and erroneously believe that the respondents actually own and operate or control the plants or factories wherein, or the machinery whereby, said articles are made or manufactured, and to purchase substantial amounts of respondents' articles on account of such mistaken and erroneous beliefs.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and constitute 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 February 7, 1939, issued and thereafter served its complaint in this proceeding upon respondents, Joseph Sculler, Inc., a corporation, Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin, individually and as officers of Joseph Sculler, Inc., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 6, 1939, the respondents filed their answer, in which answer, they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission, having duly con-

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sidered 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, Joseph Sculler, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 35 East Gay Street, in the city of Columbus, State of Ohio. Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin are, respectively, president, vice president, and secretary of said corporate respondent and have their business offices at the same address of said Joseph Sculler, Inc. Respondents Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin, as officers of the said corporation, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and practices hereinafter described.

Respondents are now, and for some time last past have been, engaged in the business of selling and distributing at wholesale and retail, watches, rings, diamonds, and a variety of jewelry, and gift articles in commerce between and among the various States of the United States. Respondents cause, and have caused, said articles when sold to be shipped from their aforesaid place of business in Columbus, State of Ohio, to purchasers thereof located in various other States of the United States.

PAR. 2. In the course and conduct of their business, as aforesaid, respondents, in soliciting the sale of and in selling their products, as above described, have caused letter-heads, invoices, and other printed matter to be distributed by traveling salesmen, and by other means, to customers and prospective customers located in States other than the State of Ohio. Said printed matter includes the following:

JOSEPH SCULLER

Manufacturing JEWELER Wholesale

Third Floor 35 East Gay Street

COLUMBUS, OHIO

The use of the word "manufacturing" in the phrase "Manufacturing Jeweler Wholesale" serves as a representation that respondents own, operate, or control the plant or factory wherein, or machinery whereby, the articles they sell are made or manufactured.

PAR. 3. In truth and in fact, respondents do not own, operate, or control, and have not owned, operated, or controlled for some time last

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past, a plant, factory, or machinery for the manufacture of the articles, jewelry, or watches they sell and distribute as hereinabove found, but respondents have filled, and now fill, orders for such articles of merchandise with products which are made or manufactured in a plant or factory or by machinery which they neither own, operate, nor control.

PAR. 4. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States for buying said articles and like or similar articles directly from the manufacturer or factory producing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said articles that a saving of the middleman's profit may be obtained, that a more uniform line of jewelry may be purchased, and that other advantages may be obtained by purchasing goods directly from a manufacturer or plant operator.

PAR. 5. The use by respondents of the word "manufacturing" in the phrase "Manufacturing Jeweler Wholesale," disseminated as aforesaid, has the tendency and capacity to, and does, cause members of the purchasing public situated in various States of the United States to have the erroneous and mistaken belief that respondents actually own and operate or control the plants or factories wherein, or machinery whereby, said merchandise is made or manufactured, and into purchasing substantial amounts of respondents' merchandise because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Joseph Sculler, Inc., its officers, and respondents Joseph Sculler, Mrs. Joseph Sculler, and Hamel Gurwin,

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the representatives, agents, and employees of said respondents, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of watches, rings, diamonds, jewelry, and other merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly, or indirectly, that they manufacture such merchandise unless and until they own and operate or directly and absolutely control, the plant or factory wherein such merchandise is manufactured.

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.

Syllabus

IN THE MATTER OF

ILLINOIS BAKING CORPORATION

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

Docket 3495. Complaint, July 16, 1938—Decision, Mar. 27, 1939

Where a corporation engaged in manufacture of ice cream cones and in sale and distribution thereof and in selling and distributing certain of its cones by means of a lottery scheme, gift enterprise, or game of chance under which retail dealer assembling from coupons, of which it enclosed and concealed one with each 250 cone-package, letters to spell legend "S-A-F-E-T C-O-N-E-S," became entitled to receive from his jobber-seller 1,000 additional cones without additional cost—

Sold assortments as aforesaid to wholesaler and jobber customers by whom coupons, in accordance with aforesaid plan and explanatory legends enclosed, were redeemed for retailer customers in accordance with such plan, and thereby supplied to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in sale of its products in accordance with such sales plans, contrary to public policy as long considered, and to an established public policy of the United States Government, and in competition with many who make and sell such products and are unwilling to offer or sell such cones by said or equivalent or similar method involving same or equivalent or similar element of chance or lottery scheme and refrain therefrom;

With capacity and tendency to induce retail dealers to purchase its said products in preference to those made and offered and sold by its competitors and with result that many dealers were attracted by its said method and manner of selling its said ice cream cones and by element of chance involved in sale thereof as above described and were thereby induced to buy and sell such products in preference to those offered and sold by competitors who do not use such or equivalent methods, and with effect, through use of such method and because of said element of chance, of unfairly diverting trade and custom to it from its competitors aforesaid who are unwilling to and do not use such or equivalent method as unlawful, to their substantial injury:

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. Charles F. Diggs*, trial examiner.

Mr. D. C. Daniel for the Commission.