

Complaint

IN THE MATTER OF

NEW YORK PATTERN COMPANY, INC., FASHION
INSTITUTE, INC., AND JOHN HOWIE WRIGHTCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3119. Complaint, Apr. 28, 1937—Decision, May 3, 1939*

Where a corporation and an individual, who dominated and controlled the activities thereof, engaged in manufacture and sale of dress patterns under registered trade-mark "Hollywood"—

- (a) Distributed to trade throughout United States, counter display catalogs of its said "Hollywood" patterns, front cover page of which simulated, with respect both to color, varying from month to month, and design depicted thereon, consisting of five-pointed silver star superimposed on basic coloring, similar catalogs of Hollywood Pattern Company, through which, as its wholly owned subsidiary, publisher of style magazine "Vogue" had for a number of years sold, under its registered trade-mark "Hollywood," its cheaper patterns, samples of which had been distributed to chain and department stores throughout the United States and which, by end of February 1933, were on sale in practically every State of the United States; and
- (b) Informed retail dealers in paper dress patterns throughout the United States, through its agents, that patterns shown in its catalogs were the only "Hollywood" patterns on the market, and in some instances made representation that said corporation had purchased the business of said Hollywood Pattern Co. to said retail dealers, by whom aforesaid representations were communicated to the purchasing public;

With result that members of consuming public purchased "Hollywood" patterns of said representing corporation as and for the patterns of said Hollywood Pattern Co., and trade was thus diverted from latter to it:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. Samuel Randel, of New York City, 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 New York Pattern Co., Inc., Fashion Institute, Inc., corporations, and John Howie Wright, an individual, have been, and are, using unfair methods of competition in commerce, as "commerce" is defined in

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said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent New York Pattern Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 119 West Nineteenth Street, in the city of New York, within the State of New York, and with its factory located in the city of South Bend, within the State of Indiana. Said respondent is now, and for more than 3 years last past has been, engaged in the manufacture and sale of paper dress patterns. Said respondent causes said paper dress patterns, when sold by it, to be transported from Indiana, the State of manufacture, to the purchasers thereof located in the State of Indiana and in various other States of the United States and in the District of Columbia. There is now, and for more than 3 years last past has been, a constant current of trade and commerce by said respondent in said paper dress patterns between and among the various States of the United States and in the District of Columbia.

PAR. 2. Said respondent Fashion Institute, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 119 West Nineteenth Street, in the city of New York, within the State of New York. Said respondent, Fashion Institute, Inc., is now, and for more than 3 years last past has been, engaged in the manufacture and sale of paper dress patterns, the publication of fashion magazines, and the dissemination of fashion news and information to dry goods retailers. Said respondent Fashion Institute, Inc., causes said paper dress patterns, magazines, fashion news and information, when sold by it, to be transported from the State of manufacture to the purchasers thereof located in the State of New York and in various other States of the United States and in the District of Columbia. There is now, and for more than 3 years last past has been, a constant current of trade and commerce by said respondent, Fashion Institute, Inc., in said paper dress patterns, fashion magazines, fashion news and fashion information between and among the various States of the United States and in the District of Columbia.

PAR. 3. Said respondents New York Pattern Co., Inc., and Fashion Institute, Inc., in the course and conduct of their respective businesses are now, and for more than 3 years last past have been, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with various individuals, firms, partnerships, and corporations engaged in the

interstate sale of paper dress patterns, fashion magazines, fashion news, and fashion information.

PAR. 4. Said respondent John Howie Wright is an individual whose principal place of business is located at 119 West Nineteenth Street in the city of New York, within the State of New York. Said respondent is the dominating personality behind said respondents New York Pattern Co., Inc., and Fashion Institute, Inc., and in various other corporations engaged in a similar business, which are affiliated with the said respondents New York Pattern Co., Inc., and Fashion Institute, Inc. As the dominating personality in said corporate respondents, New York Pattern Co., Inc., and Fashion Institute, Inc., and in the various affiliated companies, said John Howie Wright directs and controls the business policies and practices of said corporate respondents.

PAR. 5. Conde Nast Publications, Inc., is a corporation existing under the laws of the State of New York, and for many years has been engaged in the publication and distribution in interstate commerce of fashion magazines, including Vogue, and fashion news, and fashion information. The magazine Vogue is recognized as one of the outstanding fashion magazines for women published in the United States, and the fashion news and information which is distributed by said Conde Nast Publications, Inc., is considered by women and by fashion experts to be among the most outstanding and authoritative in the country. Said Conde Nast Publications, Inc., has, through the medium of one of its divisions known as "Vogue Pattern Service," for many years been engaged in the manufacture and sale in interstate commerce of paper dress patterns. Said paper dress patterns have been sold, and now are sold, in the leading department and women's apparel and specialty stores throughout the country, under the trade name of "Vogue patterns," and are of outstanding quality as to fashion, workmanship, fit, and style. Said Vogue patterns are generally recognized as being among the leading patterns in the higher class pattern field, and retail at prices from 40 cents to \$2, each.

PAR. 6. In the year 1932, after due investigation, said Conde Nast Publications, Inc., decided to enter the low priced paper dress pattern field by manufacturing and distributing a paper dress pattern to retail at 15 cents. It was decided that the low priced paper dress patterns would not be manufactured by the makers of Vogue patterns, or sold in connection with Vogue patterns, but would be manufactured by a separate corporation and marketed under the brand name "Hollywood," as the city of Hollywood, Calif., has become recognized as a fashion center, and would be distributed through stores

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other than those handling "Vogue" patterns. Said Conde Nast Publications, Inc., on December 6, 1932, filed application in the U. S. Patent Office, to register the word "Hollywood" as a trade-mark for paper dress patterns, alleging it had used the word "Hollywood" in its business in interstate commerce since November 25, 1932. The application was refused under the Act of 1905, but, after amendment, registration of the word "Hollywood" as a trade-mark for paper dress patterns was granted to said Conde Nast Publications, Inc., on January 9, 1934, under the act of March 19, 1920. Thereafter, and in furtherance of its said plans, said Conde Nast Publications, Inc., caused to be organized under the laws of the State of Connecticut, a wholly-owned subsidiary corporation, under the name of Hollywood Pattern Co. Said Hollywood Pattern Co. has been, and now is, manufacturing and selling and distributing paper dress patterns in interstate commerce, under the name of "Hollywood patterns," to medium and cheaper priced stores, and said patterns retail for 15 cents, each.

PAR. 7. For a number of years prior to the time that the Hollywood Pattern Co. began to make low priced paper dress patterns, this field was dominated by two manufacturers of paper dress patterns, namely, the Simplicity Pattern Co., and the respondent New York Pattern Co., Inc. Patterns manufactured and distributed by the respondent New York Pattern Co., Inc., and Simplicity Pattern Co., were patterns offered for sale principally in the cheaper priced stores, and generally through the medium of chain stores. Said respondent New York Pattern Co., Inc., prior to February 1934, manufactured paper dress patterns under the brand name of "Modern patterns," which retailed for 15 cents, and the "New York patterns," which retailed for 10 cents.

PAR. 8. Said respondent New York Pattern Co., Inc., on December 30, 1932, after learning that Conde Nast Publications, Inc., was preparing to offer to the purchasing public paper dress patterns in the lower price field, filed application with the United States Patent Office for registration of the name "Hollywood" as a trade-mark for paper dress patterns, and alleged that said name had been used by said New York Pattern Co., Inc., in its business in interstate commerce, since about December 14, 1932. Said application was refused under the act of 1905, but after amendment, on February 6, 1934, said respondent New York Pattern Co., Inc., was granted a trade-mark in the name "Hollywood," for use on paper dress patterns, under the act of March 19, 1920. Thereafter, said respondent New York Pattern Co., Inc., has been manufacturing and distributing, and does now manufacture and distribute, in interstate commerce

paper dress patterns under the brand name of "Hollywood patterns," which said patterns sell at retail for 10 cents.

PAR. 9. Said individual respondent, John Howie Wright, and said corporate respondents, the New York Pattern Co., Inc., and Fashion Institute, Inc., which said corporate respondents are affiliated, and are controlled, directed and dominated by, said individual respondent, John Howie Wright, have, since February 1934, hindered and suppressed, and are now hindering and suppressing, competition in the manufacture and interstate sale of paper dress patterns in the low price field by:

1. Causing to be circulated throughout the United States, to retail stores, generally, engaged in the sale of paper dress patterns, and including stores handling patterns manufactured, sold, and distributed by the said Hollywood Pattern Co., various false, deceptive, misleading and disparaging statements as to the character, style, quality, workmanship, and desirability of paper dress patterns manufactured and sold by the makers of Vogue patterns, which said statements were in the form of fictitious newspaper clippings.

2. Causing to be circulated throughout the United States, and to retail stores handling paper dress patterns generally, including stores handling patterns manufactured, sold, and distributed by the said Hollywood Pattern Co., false, deceptive, and misleading statements as to the financial standing and stability of said Conde Nast Publications, Inc., the manufacturer and distributor of Vogue patterns and the sole owner of the Hollywood Pattern Co.

3. Causing to be circulated throughout the United States, and in retail stores generally, engaged in the sale of paper dress patterns, including those stores which handle patterns manufactured, sold, and distributed by the said Hollywood Pattern Co., various false, deceptive, and misleading statements as to the salability of Hollywood patterns manufactured and sold by the Hollywood Pattern Co., and various false, deceptive, and misleading statements to the effect that the Hollywood Pattern Co. is rendering second rate service.

4. Causing to be circulated throughout the retail stores engaged in the sale of paper dress patterns generally, including those stores which handle Vogue patterns, various false and misleading statements tending to disparage Vogue patterns by alleging that said patterns are the same as the cheaper-priced Hollywood patterns manufactured by the said Hollywood Pattern Co.

5. Issuing and distributing to retail stores throughout the United States engaged in the sale of paper dress patterns generally, including those stores which handle patterns manufactured by the said Hollywood Pattern Co., counter display books similar in design and

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color to the counter display books which are distributed by the said Hollywood Pattern Co., and which simulate and imitate the said counter display books of said Hollywood Pattern Co.

PAR. 10. Said respondent Fashion Institute, Inc., in the conduct of its business, has caused retail stores generally, throughout the country, and that portion of the public which buys paper dress patterns, to believe that it, the said respondent, Fashion Institute, Inc., is an impartial and reliable agency for the dissemination of fashion news and information, by deceptively and misleadingly using as a part of its corporate name the word "Institute."

PAR. 11. In truth and in fact, the paper dress patterns manufactured and sold by the said Conde Nast Publications, Inc., under the brand name of Vogue patterns are patterns of the highest quality as to style, fashion, design, workmanship, and fit; Conde Nast Publications, Inc., is of sound financial standing and stability; the paper dress patterns manufactured and sold by the said Hollywood Pattern Co. are not seconds, but of first quality workmanship designed and intended to be sold in the lower priced pattern field, and the service rendered by the said Hollywood Pattern Co. is first class service; Vogue patterns are not the same as Hollywood patterns, but are different as to style, fashion, and design, and intended to be, and are, sold for a different purpose to a different class of trade; the paper dress patterns manufactured by the said respondent New York Pattern Co. under the name Hollywood patterns are not the same as the Hollywood patterns manufactured and sold by the said Hollywood Pattern Co.; and in truth and in fact said respondent Fashion Institute, Inc., is not an impartial and reliable agency engaged in the dissemination of fashion news and information, but is a private organization engaged in the manufacture and sale of low priced paper dress patterns and fashion news and information for private gain.

PAR. 12. The aforesaid false, deceptive, misleading, and disparaging statements and representations so made by said respondents, as above alleged, have the tendency and capacity to mislead and deceive, and do mislead and deceive, the purchasing public into the false and erroneous beliefs (a) that said statements are true; (b) that the patterns manufactured by the makers of Vogue patterns are undesirable as to character, workmanship, style, design, fashion, and fit; (c) that said Conde Nast Publications, Inc., the manufacturer and distributor of Vogue patterns is a company of unsound and unreliable financial standing and of no stability; (d) that the patterns manufactured and service rendered by the said Hollywood Pattern Co. are second rate and of inferior quality; (e) that Vogue

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patterns which are sold in the high class stores at prices ranging from 40 cents to \$2 each are in truth and in fact exactly the same patterns and styles that are being sold under the name of Hollywood patterns through the lower priced, and chain, stores at 15 cents; (f) that in some instances the Hollywood patterns sold by the respondent New York Pattern Co. are manufactured and sold by the said Hollywood Pattern Co., and (g) that the respondent Fashion Institute is in truth and in fact a reliable agency for the dissemination of fashion news and information. The use by said respondent New York Pattern Co. of style books similar in color and design to the style books of the said Hollywood Pattern Co. is calculated to, tends to, and does, confuse the paper dress patterns manufactured by the two said companies in the minds of the purchasing public. Further, said false, deceptive, misleading, and disparaging statements have the tendency and capacity to, and do, divert trade to the said corporate respondents from their competitors, especially the said Hollywood Pattern Co., and to induce the public to purchase Hollywood patterns manufactured and sold by the said respondent New York Pattern Co. in preference to Hollywood patterns manufactured by the said Hollywood Pattern Co., because of such erroneous beliefs brought about as hereinabove set out. As a result thereof, substantial injury has been, and is now being, done by said respondents to substantial competitors in commerce among and between various States of the United States and in the District of Columbia.

PAR. 13. The above acts and things done by said respondents, New York Pattern Co., Inc., Fashion Institute, Inc., and John Howie Wright, are all to the injury and prejudice of the public and of the respondents' competitors in commerce 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 April 28, A. D. 1937, issued and served its complaint in this proceeding upon the respondents, New York Pattern Co., Inc., Fashion Institute, Inc., and John Howie Wright, 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 the filing of answers thereto by respondents New York Pattern Co., Inc., and John Howie Wright, testimony and other evidence in support of the allegations of the complaint were introduced by Reuben J. Martin, attorney for the

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Commission, and in opposition to the allegations of the complaint by Samuel Randel, before Charles F. Diggs, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final consideration before the said Commission on the said complaint, the answers thereto, the testimony and other evidence, and brief in support of the complaint; 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 New York Pattern Co., Inc., was incorporated under the laws of the State of New York in 1928 or 1929, and its principal place of business is located at 119 West Nineteenth Street, in the city and State of New York.

PAR. 2. Respondent Fashion Institute, Inc., was incorporated under the laws of the State of New York, but has not functioned or engaged in any business since approximately 1934.

PAR. 3. The stockholders are the same in both of the respondent corporations.

PAR. 4. Respondent John Howie Wright now resides in Toronto, Canada, and since 1936 has not owned any stock in either of the respondent corporations, nor has he participated in the management of either; but from the time of its incorporation up to the year 1936 he dominated and controlled the activities of respondent New York Pattern Co., Inc., and he dominated and controlled the activities of respondent Fashion Institute, Inc., from the time of its incorporation until it ceased to do business.

PAR. 5. Respondent New York Pattern Co., Inc., since 1928 or 1929 has been engaged in the business of manufacturing paper dress patterns at its factory located in South Bend, Ind., and in the sale and distribution thereof to customers located throughout the United States.

PAR. 6. The respondent Fashion Institute, Inc., during the time it was functioning, was engaged in the business of manufacturing paper dress patterns, and in the sale and distribution thereof to customers located throughout the United States.

PAR. 7. Respondent New York Pattern Co., Inc., from the date of its incorporation to the present time, has been in substantial competition in commerce between and among the several States of the

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United States with corporations, individuals, firms, and partnerships engaged in the interstate sale of paper dress patterns, and respondent Fashion Institute, Inc., during the time it was functioning was similarly engaged.

PAR. 8. Conde-Nast Publications, Inc., for many years past has published a style magazine known as "Vogue," and has also manufactured and sold throughout the United States paper dress patterns known as "Vogue" patterns; these patterns are recognized by the trade and public as being among the best standards of fashion in the higher-priced class, and range in price from 30 cents to \$2 each. This corporation decided to manufacture paper dress patterns to be sold at retail for 15 cents, and to be known as "Hollywood" patterns, and in October 1932, it distributed samples of such patterns to chain and department stores throughout the United States and by the end of February 1933, these patterns were on sale in practically every State of the United States. This corporation, in order that the sale of its "Vogue" patterns should not be adversely affected, in December 1932, caused to be incorporated its wholly owned subsidiary, Hollywood Pattern Co., which company, since its incorporation, has manufactured the said "Hollywood" patterns. On December 6, 1932, Conde-Nast Publications, Inc., filed an application in the United States Patent Office to have the name "Hollywood" registered as a trade-mark, and on January 9, 1934, said application was granted. The Hollywood Pattern Co. used this trade-mark, but the same was not assigned to it until August 1936.

PAR. 9. Respondent New York Pattern Co., Inc., on December 30, 1932, filed its application in the United States Patent Office to have the name "Hollywood" registered as a trade-mark and said application was granted on February 6, 1934. Since December 1932, this respondent has manufactured and sold throughout the United States paper dress patterns which retail at 10 cents each, and which it designates "Hollywood" patterns.

PAR. 10. Respondent New York Pattern Co., Inc., distributes to the trade throughout the United States counter display catalogues of its "Hollywood" patterns, the front cover page of which simulates those distributed by the Hollywood Pattern Co., with respect both to the color which varies from month to month, and the design depicted thereon, which is a five-pointed silver star superimposed on the basic color. Said respondent, through its agents, informs retail dealers in paper dress patterns throughout the United States that the patterns shown in its catalogues are the only "Hollywood" patterns on the market, and in some instances said agents represented that said respondent corporation had purchased the business of the

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Hollywood Pattern Co., and such representations were communicated to the purchasing public.

PAR. 11. As a result of the matters detailed in the foregoing paragraph, members of the consuming public have purchased the "Hollywood" patterns of respondent New York Pattern Co., Inc., in the belief that they were purchasing patterns of the Hollywood Pattern Co., and as a result, trade has been diverted from the Hollywood Pattern Co. to said respondent.

CONCLUSION

The acts, policies and practices of the respondents as set forth in the foregoing findings as to the facts are to the prejudice of the public and of one of respondents' competitors, and constitute unfair methods of competition in commerce, in violation 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 answers of respondents New York Pattern Co., Inc., and John Howie Wright, testimony and other evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of the complaint filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, John Howie Wright and New York Pattern Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of paper dress patterns in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. From representing by means of counter display catalogs or in any other manner that the paper dress patterns sold by the New York Pattern Co., Inc., under the designation "Hollywood" patterns are the only Hollywood patterns on the market.
2. From representing that the New York Pattern Co., Inc., has purchased the business of the Hollywood Pattern Co.
3. From representing that the paper dress patterns sold by the New York Pattern Co., Inc. under the name Hollywood patterns are the

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same as the paper dress patterns sold by the Hollywood Pattern Co. under the name Hollywood patterns.

4. From distributing a counter display catalog of the Hollywood patterns of the New York Pattern Co., Inc. which simulates, with respect to color and design, the counter display catalog of the Hollywood patterns of the Hollywood Pattern Co.

It is further ordered, That the complaint herein as to the respondent, Fashion Institute, Inc., be and the same is hereby dismissed.

It is further ordered, That the respondents, New York Pattern Co., Inc., and John Howie Wright, 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
**HARRY CUTLER, INDIVIDUALLY, AND TRADING AS
GENERAL SALES COMPANY**

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

Docket 3568. Complaint, Aug. 31, 1938—Decision, May 3, 1939

Where an individual engaged in sale and distribution of electric razors, cameras, radios, kitchen appliances, pencils, and pen and pencil sets to purchasers in other States—

Furnished to his customers various devices which involved the operation of games of chance, gift enterprise, or lottery schemes through which his said merchandise was distributed to the ultimate consumers thereof wholly by lot or chance, and which included the furnishing of push cards, order blanks, and circulars explaining his plan of selling his said products and allotting his premiums or prizes to the patrons of such push cards, in accordance with which amount paid for chance, if any, by customer was dependent upon number pushed by chance, and certain number entitled purchaser securing same to pen and pencil set, and receipt or failure to receive electric razor or article being thus disposed of was dependent upon success or failure in selecting from list of feminine names displayed on card, name corresponding to that concealed under card's large master seal, and persons who did not push winning number or name as above set forth, received nothing for the money paid by them, except right to push card; and

Placed thereby in hands of others means of conducting lotteries in the sale of his said merchandise through use of such cards as above described, and varying therefrom in minor details only, by which various other articles were sold and distributed by him solely by lot or chance, contrary to an established public policy of the United States Government, and in violation of criminal law and in competition with many who refrain from disposing of their merchandise by a method involving lottery or game of chance as contrary to public policy;

With result that many persons were attracted by his said sales plan or method of distribution of his merchandise, by element of chance involved therein, and were thereby induced to buy and sell such merchandise in preference to that offered and sold by his competitors who do not use same or similar methods of distribution, and trade was unfairly diverted to him from competitors aforesaid who, as above set forth, refrain from use of such method:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. D. C. Daniel and *Mr. P. C. Kolinski* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.