

Syllabus

IN THE MATTER OF
O. K. TAILORING COMPANY, INC.

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

Docket 3404. Complaint, May 6, 1938—Decision, June 7, 1939

Where a corporation engaged in sale and distribution to members of purchasing public in other States and in the District of Columbia of men's suits and garments, among other items of merchandise; in advertising its said suits and garments in newspapers and other advertising media circulating among the various States and in said District—

- (a) Represented that said garments and suits were made wholly of wool through such statements as "All Wool Made-To-Measure Clothes," "All Wool Fabrics" and "100% All Wool," facts being said products were not made wholly of wool, but, in the case of many, were made of wool and rayon, wool, and cotton, or wool, cotton and rayon;
- (b) Represented that suits were given away free of charge by it to salesmen selling its said products through such statements as "Wear This *Free Suit* given you as a bonus" and "Will You Accept Free as a bonus a complete wardrobe of Tailored Suits?" and "Chance to Get Made-To-Measure Suit Free as a bonus right away! Wear it!", facts being it did not give away free of charge suits to salesmen selling its said merchandise, but compensated its said salesmen under an arrangement by which agent or employee, in addition to commission paid him on each suit sold, was entitled to receive from it for sale of as many as seven suits, suit for self; and
- (c) Represented that its lines of garments and suits for men were "The Fastest Selling Lines in America," and that it paid a salesman as compensation for selling single suit \$7, suit of clothes and cash bonus through such statements as "The Fastest Selling Lines in America" and "Make up to \$7 per suit including Suit Free of cost plus Cash Bonus," facts being its said lines were not the fastest selling, it did not pay as high as \$7 in cash, and give salesman suit and cash bonus for sale of single suit, but compensated him through payment of commission ranging from \$3 to \$6.50 for each suit sold, with sale of seven suits, as above set forth, entitling him to suit for himself, and with order for 25 suits entitling him to \$25 cash bonus and certain additional commissions;

With effect of misleading substantial number of salesmen and their customers into erroneous and mistaken belief that all said representations were true and with result, as direct consequence, that number of salesmen and their customers purchased substantial number of its garments and suits, and trade was diverted unfairly to it from competitors likewise engaged in sale and distribution of such products and who do not misrepresent the quality or popularity of their merchandise and nature and amount of compensation paid to salesmen thereof:

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

Complaint

29 F. T. C.

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

Mr. Karl Stecher, Mr. Floyd O. Collins and Mr. George Foulkes for the Commission.

Mr. Raymond J. Moudry, 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 O. K. Tailoring Co., Inc., 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, O. K. Tailoring Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its principal place of business located at 325 South Market Street, in the city of Chicago, State of Illinois. It is now, and has been for several years heretofore, engaged in the business of selling and distributing to members of the purchasing public, among other items of merchandise, suits, and garments for men.

Respondent causes said suits and garments for men to be transported from its place of business in the city of Chicago, State of Illinois, to the purchasers thereof located at points in States of the United States other than the State of Illinois and in the District of Columbia. It maintains and for a period of more than 1 year last past has maintained a course of trade and commerce in said suits and garments for men between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent has been and is engaged in substantial competition in the sale and distribution of said suits and garments for men with other corporations and with firms and individuals likewise engaged in the business of selling and distributing suits and garments for men in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its suits and garments for men by members of the purchasing public, respondent has from time to time inserted advertisements in newspapers having an interstate circulation, and has made use of other advertising media, designed and intended to influence purchasers of said suits and garments for men. In said advertisements respondent has made or caused to be made various representations concerning the quality of its products and also

concerning the nature and character of its business and its offers to the public, among which are the following:

All Wool Made-To-Measure Clothes.

ALL WOOL FABRICS.

100% All Wool.

Wear This *FREE SUIT* given you as a bonus.

Will You Accept *FREE* as a bonus a complete wardrobe of *Tailored Suits*?

Chance to Get Made-To-Measure Suit *FREE* as a bonus right away! Wear it!

No limit to number of Free Bonus Suits given you.

I'll keep you in clothes for the rest of your life without it costing you a penny.

Fine Traveling Case and large samples *FREE*.

We'll send you our big expensive selling outfit *FREE OF CHARGE*.

The Fastest Selling Lines in America.

Make up to \$7 per suit including Suit Free of cost plus Cash Bonus.

PAR. 4. The aforesaid statements made by respondent in the offering for sale and sale of its suits and garments for men as set forth in paragraph three hereof purport to be descriptive of its merchandise and serve as representations to the purchasing public: That the suits and garments for men offered for sale and sold by respondent are made wholly of wool; that respondent gives away suits free of charge; that respondent gives away, free of charge of any kind, a fine traveling case and a big expensive selling outfit; that the lines of suits and garments for men offered for sale and sold by respondent are the fastest selling lines in America and that respondent pays as compensation for the sale of one single suit as high as \$7 in cash plus a suit of clothes plus a cash bonus.

PAR. 5. In truth and in fact the representations made or caused to be made by respondent as hereinbefore set out and the inferences thereby created in the mind of the public are false and misleading in that; All of the suits and garments offered for sale and sold by respondent are not made wholly of wool. Respondent does not give away suits free of charge. Respondent does not give away free of charge a fine traveling case and a big expensive selling outfit. Respondent has no authoritative statistics upon which to base its assertion that it offers the fastest selling lines in America. Respondent does not pay as high as \$7 in cash plus a suit of clothes plus an additional cash bonus as compensation for the sale of a single suit of clothes. The merchandise represented by respondent to be given away free is given only as compensation for services rendered or expected to be rendered to it.

PAR. 6. There are now and have been competitors of respondent selling and distributing suits and garments for men in commerce among and between the various States of the United States and in the District of Columbia who do not in the offering for sale and sale

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of their products misrepresent the nature, character, quality, popularity, or method or manner of, or compensation paid for, the sale or distribution of said products and who do not represent that such or other products or articles are given away free by them when such is not the fact.

PAR. 7. The false and misleading representations made by respondent in the offering for sale and sale of its suits and garments for men, as hereinabove set out, had and have the capacity and tendency to and did and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief: That all of said suits and garments are made wholly of wool; that suits may be obtained from respondent free of charge; that a fine traveling case and a big expensive selling outfit may be obtained from respondent free of charge; that respondent's suits and garments for men constitute the fastest selling lines in America; and that it is possible for one to earn as much as \$7 in cash plus a cash bonus plus a suit of clothes for selling one single suit for respondent.

On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been and is induced to purchase suits and garments for men from respondent and thereby trade has been and is unfairly diverted to respondent from competitors named in paragraphs 2 and 6 hereof. As a result thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. 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 May 6, 1938, issued and on May 9, 1938, served its complaint in this proceeding upon respondent, O. K. Tailoring Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Floyd O. Collins, attorney for the Commission, and in opposition to the allegations of the complaint by Raymond J. Moudry, attorney for respondent,

before Robert S. Hall, an 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 proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint, respondent not having filed brief, and oral argument not having been requested; 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, O. K. Tailoring Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its principal place of business located at 325 South Market Street, in the city of Chicago, State of Illinois. Respondent is now, and has been for several years heretofore, engaged in the business of selling and distributing to members of the purchasing public, among other items of merchandise, suits, and garments for men. Respondent causes said suits and garments for men to be transported from its place of business in the city of Chicago, State of Illinois, to the purchasers thereof located at points in States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains and for a period of more than one year last past has maintained a course of trade in commerce in said suits and garments for men between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent has been and is engaged in substantial competition in the sale and distribution of said suits and garments for men with other corporations and with firms and individuals likewise engaged in the business of selling and distributing suits and garments for men in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its suits and garments for men by members of the purchasing public, respondent has from time to time inserted advertisements in newspapers and in other advertising media, having a circulation among and between the various States of the United States and in the District of Columbia, designed and intended to influence purchasers of said suits and garments for men. In said advertisements respondent has made or caused to be made

various representations concerning the quality of its products and also concerning the nature and character of its business and its offers to the public, among which are the following:

All Wool Made-To-Measure Clothes.

ALL WOOL FABRICS.

100% ALL WOOL.

Wear This *FREE SUIT* given you as a bonus.

Will You Accept *FREE* as a bonus a complete wardrobe of Tailored Suits?

Chance to Get Made-To-Measure Suit *FREE* as a bonus right away! Wear it!

No limit to number of Free Bonus Suits given you.

I'll keep you in clothes for the rest of your life without it costing you a penny.

We'll send you our big expensive selling outfit *FREE OF CHARGE*.

The Fastest Selling Lines in America.

Make up to \$7 per suit including Suit Free of cost plus Cash Bonus.

In all of its advertising literature, respondent represents, through statements and representations herein set out and through statements of similar import and effect, that:

1. The garments and suits offered for sale and sold by respondent are made wholly of wool.

2. Suits are given away free of charge by respondent to salesmen who sell respondent's garments and suits.

3. The lines of respondent's garments and suits for men are the fastest selling lines in America.

4. That respondent pays a salesman, as compensation for the sale of a single suit of clothes, the amount of \$7 and a suit of clothes and cash bonus.

PAR. 4. The aforesaid statements and representations made by respondent in offering for sale and selling its garments and suits for men are false and misleading. In truth and in fact the garments and suits for men, offered for sale and sold by respondent, are not made wholly of wool. The testimony shows and the Commission finds that many of the respondent's garments and suits are made of wool and rayon, wool and cotton, or wool, cotton and rayon.

In truth and in fact, suits are not given away free of charge by respondent to salesmen who sell respondent's merchandise. Respondent's sales plan is as follows: Respondent's salesmen are paid a commission varying from \$3 to \$6.50 per suit for every suit of clothing sold by them. When a salesman sells as many as seven suits he may receive from respondent a suit of clothes. When a salesman sends respondent orders for twenty-five suits, respondent pays the salesman a \$25 cash bonus and raises the salesman's commission \$1 for every suit sold by said salesman. This \$25 bonus and \$1 raise in commission is in addition to the extra suit which the salesman

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receives for every seven suits sold by said salesman. The Commission finds that the extra suits received by agents from respondent for the sale of seven suits of clothes are not free, but are part of the salesman's compensation for selling respondent's merchandise.

Respondent's lines of garments and suits are not the fastest selling lines in America.

Respondent does not pay as high as \$7 in cash and give a salesman a suit of clothes and cash bonus for the sale of a single suit of respondent's clothes, but compensates all the salesmen in the manner above set forth.

Each and all of the false and misleading statements and representations made by respondent in offering for sale and selling its garments and suits for men had, and now have, the capacity to, and do, mislead a substantial number of salesmen and their customers into the erroneous and mistaken belief that all of said representations are true. As a direct result thereof, a number of salesmen and their customers have purchased a substantial number of respondent's garments and suits for men, with the result that trade in commerce among and between the various States of the United States and in the District of Columbia has been diverted unfairly to respondent from competitors likewise engaged in the business of selling and distributing suits and garments for men and who do not misrepresent the quality or popularity of their merchandise, or the nature and amount of compensation paid to salesmen thereof.

CONCLUSION

The aforesaid acts and practices of 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 respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and brief in support of the allegations of the complaint (respondent not having filed brief and not having requested oral argument) and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

Order

29 F. T. C.

It is ordered, That the respondent, O. K. Tailoring Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of suits and garments for men in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the unqualified word "wool" or any other word or words of similar import or meaning to designate or describe any fabric or other products which are not composed wholly of wool, provided that in the case of a fabric or product composed in part of wool, and in part of a material or materials other than wool, such words may be used as descriptive of the wool content if there is used in immediate connection therewith in letters of equal size and conspicuousness a word or words accurately describing and designating each constituent fabric or material thereof in the order of its predominance by weight beginning with the largest single constituent.

2. Using the term "free" or any other term or terms of similar import or meaning to designate or refer to merchandise regularly offered as compensation for distributing respondent's merchandise.

3. Representing that respondent's garments or suits are the fastest selling lines of such merchandise in America.

4. Representing that respondent's agents, representatives, distributors or salesmen receive any specified compensation, whether expressed in terms of money or merchandise or both, for the sale of respondent's merchandise unless such agents, representatives, distributors or salesmen in fact receive such compensation and there is no deception as to the services to be performed in connection with obtaining such compensation.

This order shall not be construed as permitting the use of the unqualified word "wool" to designate, describe or refer to any wool which is not virgin wool.

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

Syllabus

IN THE MATTER OF

WILLIAM J. CRESSY AND MRS. EFFIE M. ROBERTSON,
DOING BUSINESS AS FLYING INTELLIGENCE SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3431. Complaint, May 20, 1938—Decision, June 7, 1939*

Where an individual engaged in selling and distributing through the mails aviation manual of instruction and information to purchasers in various other States, in substantial competition with those engaged in sale and distribution among the various States of courses of instruction in flying, and books, pamphlets, and other information pertaining to aeronautics—

Represented that he conducted a flying school and had facilities for training persons in field of aviation and would furnish or procure jobs for students either during or after their course, and was affiliated with or sponsored by the United States Air Corps or connected therewith and that purchasers of the said manual would receive training by said Air Corps, through such advertisements in personal, special notice and instruction columns of newspapers throughout the United States as "Wanted, names, Men under 26 who are willing to work for \$75 a month while training to become aviators or ground mechanics. One year's training given by U. S. Air Corps. Costs absolutely nothing. Flying Intelligence Service," etc., and through such statements in form letter sent to those replying to aforesaid advertisement and setting forth development of aviation and, in glowing terms, opportunities for jobs in commercial aviation for those trained in the Air Corps aviation school as, referring to his said manual, "* * * answers most any question that you may have in regard to the Air Corps and is sent to you prepaid upon the receipt of \$3 from you," and "nothing else to buy" and "this money is a service charge and is refunded to you if you are not accepted for training after making application for admission to this school," and "Students are furnished uniforms, work clothes," etc., and "paid \$75.00 a month while training," etc., and "would cost at least \$3,000 if acquired at any other school, yet it is absolutely FREE HERE";

Facts being said individual at no time conducted flying school, had no facilities for training persons in field in question, never offered jobs to students of aviation, purchasers of his said manual, containing substantially same information as that in pamphlet furnished free by Air Corps, did not, by reason of such purchase, receive year's training by Air Corps, with or without cost, and he did not inform such purchasers that, in order to receive return of money paid for manual, they would be required to make formal application for admission to United States Air Corps training school and be formally denied such admission, and accompany application for refund with such formal rejection, nor disclose exacting and difficult qualifications necessary to entitle applicant to be received in training school in question, under which only those especially well qualified educationally, physically and otherwise have any chance of admission;