

Syllabus

IN THE MATTER OF
ABRAHAM STARR, TRADING AS SUPERIOR
TEXTILE MILLS

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

Docket 3190. Complaint, July 27, 1937—Decision, Nov. 15, 1939

Where an individual engaged in sale and distribution of shirts and various articles of wearing apparel for men, through some 75 salesmen who sold said products to consumers in other States through house-to-house canvass, in substantial competition with others engaged in sale and distribution in commerce among the various States and in the District of Columbia of men's shirts, wearing apparel, and other articles of haberdashery, and including among competitors manufacturers and distributors of like and similar products who truthfully advertise and represent their business status and refrain from advertising or representing, through price lists and other advertisements, that they are an old-established house and own and operate mills or sell direct from mill to wearer when such is not the case; in advertising his commodities through price lists, advertisements and other printed matter published, issued, and circulated through the mails to his customers and prospective customers in the various States and in said District—

- (a) Represented, through such statements as "Important Announcement To All Superior Representatives" describing or purporting to describe "Free Merchandise Sale" being conducted and to expire on the day therein named, that there were being offered "Four Shirts for the price of Three" and "Four Ties for the price of Three" and, similarly, other articles of apparel including undergarments, work shirts, pajamas, hose, and sweaters, facts being purchasers and prospective purchasers did not receive one article absolutely free when they purchased stated number of articles for advertised price, in that price purportedly charged for stated number also actually covered total sales price for entire number of articles;
- (b) Represented, as aforesaid, that there was a time limitation within which purchasers or prospective purchasers might purchase aforementioned articles and receive, upon such purchase, one article absolutely free, facts being there was no such limitation within which they might buy haberdashery in question for purported special prices;
- (c) Represented, through use of word "mills" in trade name employed by said individual, and through use of such words as "Direct from Mills to Wearer" and "We are manufacturers * * *," etc., that he was a manufacturer of the apparel sold by him and owned and operated textile mill selling direct from mill to wearer, facts being he was not such manufacturer, did not own, operate, or directly and absolutely control any such mill or sell direct as aforesaid; and
- (d) Represented, through such statements, in aforesaid connection, as "Established 1905," etc., that his business dated from said year as above set forth, facts being it was not established until after 1925;

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With tendency and capacity to mislead substantial part of purchasing public and of consuming public, on the part of which there has been long marked preference for products sold and distributed to public by manufacturer, by reason of prevailing economies and other advantages reflected in dealing direct with such manufacturers, and products of which are thus bought direct in substantial volume by public by reason of its general understanding of such economies and advantages and confidence placed in manufacturers of such products, by inducing said purchasing and consuming public erroneously and mistakenly to believe that various representations made by said individual, as above set out, were true, and with effect, through such false and misleading statements and representations, of inducing substantial number of consumer purchasers of such commodities to buy products offered, sold, and distributed by said individual on account of such erroneous and mistaken belief, and with result, as consequence, that trade was diverted to him from competitors engaged in similar businesses and hereinbefore referred to; to the substantial injury of competition in commerce:

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

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. S. Brogdyne Tew, II, for the Commission.

Herwood, Paris & Herwood, of New York City, for respondent.

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 Abraham Starr, an individual trading as Superior Textile Mills, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said 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, Abraham Starr, an individual trading as Superior Textile Mills, has his principal office and place of business located at 16-20 East Twelfth Street, city of New York, State of New York. The respondent has been for more than 1 year last past engaged in the sale and distribution of shirts and other haberdashery direct to consumer purchasers. In the course and conduct of his business respondent offers said products for sale and sells the same in commerce between the State of New York and the several States of the United States and in the District of Columbia.

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When the said products are sold respondent transports or causes the same to be transported from his place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia.

There has been for more than 1 year last past and still is a constant current of trade and commerce in said products so sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution of, or in the sale and distribution of, like and similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in soliciting the sale and in selling his products, and for the purpose of creating a demand upon the part of the consuming public for said commodities, has advertised his commodities through the media of price lists, advertisements, and other printed matter, published, issued, and circulated through the United States mails, to his customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by him.

PAR. 4. The said price lists, advertisements, and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions and representations concerning his products. The following is representative of the representations made by respondent in his price lists, advertisements, and other advertising literature:

IMPORTANT ANNOUNCEMENT
TO ALL
SUPERIOR REPRESENTATIVES

October 10th will be the last day for the Free Merchandise Sale:

Four Shirts for the price of.....	Three
Four Ties for the price of.....	Three
Four Undergarments for price of.....	Three
Four Workshirts for price of.....	Three
Four Pair Pajamas for price of.....	Three
Seven Pair Hose for price of.....	Six
Three Sweaters for price of.....	Two

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Don't Forget—The last day October 10th.

Our Fall Outfit now goes to press and will be ready about October 15th. As soon as it is ready we will forward the samples to you.

SUPERIOR TEXTILE MILLS

A. Starr, President

The aforementioned representations and descriptions made by respondent in the aforesaid price lists, advertisements, and other advertising media serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that for the price which they pay for the stated number of articles of haberdashery they will receive, in addition to the articles purchased at and for the regular price therefor, one article absolutely free; and further that there is a time limitation within which they may purchase the aforementioned articles of haberdashery and receive, upon the purchase of said articles, one article absolutely free.

PAR. 5. In truth and in fact, purchasers do not receive one article of haberdashery absolutely free when they purchase the stated number of articles for the advertised price in that the price purportedly charged for the stated number of articles of haberdashery also actually covers the total sale price for the entire number of articles of haberdashery. Further, there is no time limitation within which purchasers may buy the aforementioned haberdashery for the purported special prices.

PAR. 6. In the course and conduct of his business respondent has made other false and misleading representations and statements concerning his business status, the date of the establishment of his business, and in other respects, of which the following is representative:

Established 1905

SUPERIOR TEXTILE MILLS

16-20 East 12th Street, New York, N. Y.

Postage paid to all parts of U. S. A.

SUPERIOR TEXTILE MILLS

Makers of Superior Quality Shirts

and Wearing Apparel for Men

16-20 East 12th Street

New York

Direct from Mill

Direct from Mills to Wearer

We are manufacturers of a complete line of: Shirts—Silk Neckwear—Hosiery—Pajamas—Underwear, etc. * * *

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PAR. 7. Through the above set out representations made by the respondent he represents that his business was established in 1905; that he is a manufacturer of the wearing apparel which he sells; that he owns or operates a textile mill, and that he sells direct from mill to wearer.

In truth and in fact, the respondent's business was not established in 1905, but sometime after the year 1925. He is not a manufacturer of wearing apparel, and he does not own, operate, or, directly and absolutely, control any textile mill, and he does not sell direct from mill to wearer.

PAR. 8. For many years a substantial part of the consuming public has expressed, and has had, a marked preference for products sold and distributed to the public by the manufacturers of the same. A substantial part of the consuming public is aware of the prevailing economies and other advantages that are reflected in dealing direct with manufacturers thereof, and the public generally understands how these economies and other advantages are brought about. It places confidence in the manufacturers of said products, and as a result of such knowledge purchases a substantial volume of merchandise in reliance upon this aforesaid practice.

PAR. 9. There are among the competitors of respondent manufacturers and distributors of like and similar products who truthfully advertise and represent their business status, and who refrain from advertising or representing through their price lists, advertisements, and other advertising literature that they are an old-established house and that they own and operate mills, or that they sell direct from mill to wearer when such is not the case.

PAR. 10. The foregoing false and misleading representations and acts of the respondent in selling and offering for sale such items of merchandise as hereinbefore referred to have a tendency and capacity to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia by inducing them to erroneously and mistakenly believe that the various representations made by respondent, and herein set out, are true.

PAR. 11. The aforesaid false and misleading statements and representations on the part of respondent have a tendency and capacity to induce, and do induce, a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by the respondent on account of the aforesaid erroneous and mistaken belief.

As a result thereof trade has been diverted to respondent from those competitors engaged in similar businesses and herein referred to. As a consequence thereof substantial injury has been done and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 12. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition 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 issued a complaint on the 27th day of July 1937, against the respondent, Abraham Starr, trading as Superior Textile Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act.

The respondent filed his answer to the complaint on September 18, 1937.

After the filing of the answer to the complaint, testimony, and evidence in support of the complaint were introduced by S. Brogdyne Teu, II, Esq., attorney for the Commission, and in opposition to the complaint by the respondent, pro se, before Edward E. Reardon, Esq., theretofore duly designated an examiner by the Commission.

The testimony and evidence introduced was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission upon the complaint; the answer to the complaint; the testimony and evidence; and upon the brief of counsel for the Commission; 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 the findings of the Commission as to the facts and the conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Abraham Starr, is an individual trading as Superior Textile Mills, and having his principal office and place of business located at Nos. 16-20 East Twelfth Street in

the city and State of New York. The respondent, trading under the name Superior Textile Mills, is and has been engaged in the business of the sale and distribution in commerce among and between the various States of the United States of shirts and wearing apparel for men including underwear, hosiery, pajamas, and other articles of haberdashery, since on or about 1925.

The respondent employs, and has employed, about 75 salesmen who sell respondent's merchandise, above mentioned, to consumers in States other than New York, taking orders from the consumers in a house-to-house canvass. After the orders have been received by the respondent's salesmen they transmit the same to the respondent at New York City, N. Y., who fills the order by shipping the merchandise from New York City to the purchaser located in States other than New York or other than the State of origin of the shipment.

PAR. 2. The respondent in the sale of his merchandise, as above set forth, is and has been in substantial competition with others, individuals, firms, and corporations, who are, and have been, engaged in the business of the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of men's shirts, wearing apparel, and other articles of haberdashery.

PAR. 3. Respondent, in soliciting the sale and in selling his products, and for the purpose of creating a demand upon the part of the consuming public for said commodities, has advertised his commodities through the media of price lists, advertisements, and other printed matter, published, issued, and circulated through the United States mails, to his customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by him.

PAR. 4. The said price lists, advertisements, and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions and representations concerning his products. The following is representative of the representations made by respondent in his price lists, advertisements, and other advertising literature:

IMPORTANT ANNOUNCEMENT
TO ALL
SUPERIOR REPRESENTATIVES

Findings

29 F. T. C.

October 10th will be the last day for the FREE MERCHANDISE SALE:

Four Shirts for the price of -----	Three
Four Ties for the price of -----	Three
Four Undergarments for price of -----	Three
Four Workshirts for price of -----	Three
Four Pair Pajamas for price of -----	Three
Seven Pair Hose for price of -----	Six
Three Sweaters for price of -----	Two

Don't Forget—The last day October 10th.

Our Fall Outfit now goes to press and will be ready about October 15th. As soon as it is ready we will forward the samples to you.

SUPERIOR TEXTILE MILLS

A. Starr, President

The aforementioned representations and descriptions made by respondent in the aforesaid price lists, advertisements, and other advertising media serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that for the price which they pay for the stated number of articles of haberdashery they will receive, in addition to the articles purchased at and for the regular price therefor, one article absolutely free; and further that there is a time limitation within which they may purchase the aforementioned articles of haberdashery and receive, upon the purchase of said articles, one article absolutely free.

PAR. 5. In truth and in fact, purchasers do not receive one article of haberdashery absolutely free when they purchase the stated number of articles for the advertised price in that the price purportedly charged for the stated number of articles of haberdashery also actually covers the total sale price for the entire number of articles of haberdashery. Further, there is no time limitation within which purchasers may buy the aforementioned haberdashery for the purported special prices.

PAR. 6. In the course and conduct of his business respondent has made other false and misleading representations and statements concerning his business status, the date of the establishment of his business, and in other respects, of which the following is representative:

Established 1905

SUPERIOR TEXTILE MILLS

16-20 East 12th Street, New York, N. Y.

Postage paid to all parts of U. S. A.

SUPERIOR TEXTILE MILLS

Makers of Superior Quality Shirts

and Wearing Apparel for Men

16-20 East 12th Street,

New York

Direct from Mill

Direct from Mills to Wearer

We are manufacturers of a complete line of: Shirts—Silk Neckwear—Hosiery—Pajamas—Underwear etc. * * *

PAR. 7. Through the above set out representations made by respondent he represents that his business was established in 1905; that he is a manufacturer of the wearing apparel which he sells; that he owns or operates a textile mill, and that he sells direct from mill to wearer.

In truth and in fact, the respondent's business was not established in 1905, but sometime after the year 1925. He is not a manufacturer of wearing apparel, and he does not own, operate, or directly and absolutely control any textile mill, and he does not sell direct from mill to wearer.

PAR. 8. For many years a substantial part of the consuming public has expressed, and has had, a marked preference for products sold and distributed to the public by the manufacturers of the same. A substantial part of the consuming public is aware of the prevailing economies and other advantages that are reflected in dealing direct with manufacturers thereof, and the public generally understands how these economies and other advantages are brought about. It places confidence in the manufacturers of said products, and as a result of such knowledge purchases a substantial volume of merchandise in reliance upon this aforesaid practice.

PAR. 9. There are among the competitors of respondent manufacturers and distributors of like and similar products who truthfully advertise and represent their business status, and who refrain from advertising or representing through their price lists, advertisements, and other advertising literature that they are an old-established house and that they own and operate mills, or that they sell direct from mill to wearer when such is not the case.

PAR. 10. The foregoing false and misleading representations and acts of the respondent in selling and offering for sale such items of merchandise as hereinbefore referred to have a tendency and capacity to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia by inducing them to erroneously and mistakenly believe that the various representations made by respondent, and herein set out, are true.

PAR. 11. The aforesaid false and misleading statements and representations on the part of respondent have a tendency and capacity to induce and do induce, a substantial number of consumer

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purchasers of said commodities to buy the products offered for sale, sold, and distributed by the respondent on account of the aforesaid erroneous and mistaken belief.

As a result thereof trade has been diverted to respondent from those competitors engaged in similar businesses and herein referred to. As a consequence thereof substantial injury has been done and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent and each of them, are all to the prejudice of the public, 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 complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, brief filed herein by S. Brogdyne Teu, II, counsel for the Commission (the respondent having filed no 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.

It is ordered, That the respondent Abraham Starr, individually and trading as Superior Textile Mills, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of fabrics or wearing apparel in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of the word "Mills" in respondent's trade name or of the term "direct from mills to wearer," or any words or terms of similar import or meaning, or through any other means or device, or in any manner that said respondent is the manufacturer of the products sold by him unless and until such respondent actually owns and operates or directly and absolutely controls the manufacturing plant wherein said products are manufactured by him.

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2. Representing that any article regularly included in a combination offer with other articles is "free" or that the sale thereof constitutes a "free merchandise sale."

3. Representing, designating, or describing any article or articles delivered to purchasers of other articles as "free" until and unless the conditions under which such article or articles are delivered to such purchasers are stated in immediate connection or conjunction with the term "free" in words, letters and figures of equal conspicuousness and there is no deception as to the price, quality, character, or any other feature of any of the items in the offer.

4. Representing that respondent's business was established in 1905, or at any time other than the date of its actual establishment.

5. Representing that any offer of merchandise is limited as to time or otherwise unless such offer is in fact so limited.

It is further ordered, That 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
QUALITY BAKERS OF AMERICA ET AL.

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF PARA. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3218. Complaint, Aug. 28, 1937—Decision, Nov. 15, 1939

Where a corporation, stock of which was held exclusively by some 70 non-competitive wholesale baking concerns located in various sections of the United States, constituting membership of said bakers' unincorporated association, designed and used to facilitate and further the objectives, operations, policies, and business of said corporation and the stockholders of said corporation, which (1) was engaged in purchasing commodities as purchasing agent for its stockholders and members, as aforesaid, of said association, (2) constituted the operative agency acting in behalf of said association and members thereof, (3) conducted numerous activities for said association members, including services as to purchasing, production, engineering, accounting, sales promotion, advertising, planning, publications, and management assistance, (4) in executing orders placed with it by its said stockholders and association members, transmitted such orders and purchased commodities from one or more of a group of over 200 manufacturers, processors, producers or distributors located in many different States, and (5) was compensated or reimbursed for the cost of such various services under definite arrangements and agreements, entered into between it and the association on the one hand and the members thereof on the other, by which it was agreed that one-half of the brokerage paid on each member's orders should be applied to the credit of the particular member's dues and remaining half applied by the board of directors, as it shall determine, for service purposes for the benefit of the members of the association in question, and (6) supplied to stockholders, whose credits for brokerage fees exceeded the amounts charged against them for dues, benefit of special services not included in the services rendered to all stockholders—

- (a) Accepted and received, as above set forth, brokerage fees from sellers on purchases of commodities made by its stockholders, while acting as the agent, representative, and intermediary of such stockholders and in their behalf, and while owned and controlled by them, and rendering no service to the sellers of commodities to it, and who paid such brokerage fees, but services to its stockholders in connection with the purchase of commodities by them or with the operation of their respective businesses, and not selling services to any sellers of commodities or services in connection with the sale of a commodity to it or to its stockholders; and

Where wholesale baking concerns, stockholders of said corporation, and members of said association, engaged in purchasing commodities, including flour and many other food materials, and a great variety of supplies and equipment, including machines used in business in question, from sellers in various States, and in transmitting orders for the purchase of merchandise to said corporation or service company—