

Syllabus

IN THE MATTER OF
FAIRBANKS TAILORING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3525. Complaint, Aug. 4, 1938—Decision, Mar. 27, 1940*

Where a corporation engaged in tailoring, on individual orders, suits, overcoats and other clothing for men and suits and coats for women, and in selling and distributing its said wearing apparel through salesmen or agents, who solicited and accepted orders from members of purchasing public, to purchasers in various other States, in substantial competition with others also engaged in sale and distribution of such wearing apparel in commerce among the various States and in the District of Columbia, and including among its said competitors many who do not misrepresent wool content of fabrics from which said garments are made and do not in any manner misrepresent or exaggerate earnings of their salesmen or agents, and do not designate or describe as "free" suits and overcoats not given as gift or gratuity, but as additional compensation for sale of garments—

- (a) Represented, in advertisements in periodicals of general circulation throughout the United States, in which it stated that it had openings for ambitious men to wear suits and overcoats tailored to measure by it and to act as its agents in selling said products, that such agents could make up to \$10 per day by selling its clothing without canvassing, and that experience was not necessary, facts being inexperienced salesman could not earn such amount without canvassing, and it would be necessary for salesman, in order to earn such sum or any amount approximating it, to be consistently employed in, and necessarily in canvassing, sale of its garments;
- (b) Referred, in its said advertisements for agents, to so-called free suit offer, facts being such suits were not free and were not delivered to those replying to such advertisements without cost and unconditionally, but were delivered only to those who sold, within stated period of time, 12 or specified number of its garments, and so-called free suits were earned by those securing same through their services in selling its said products and not as a gift or gratuity; and
- (c) Described, in literature sent to those replying to aforesaid advertisements, material from which wearing apparel was produced by it as "The finest of wool fabrics," "all worsted" and "all wool," and in sample fabric books supplied to its salesmen and agents for display in promoting sale of its said products, respectively described as "all wool Herringbone," etc., and "all worsted twist with rayon design," the two fabrics concerned, and further labeled and described by sample as "all worsted" other fabrics, and in advertising matter referring generally to aforesaid samples, referred thereto as "all wool," "wool," "woolen" and "100% all wool," facts being fabric first referred to was not composed of wool in its entirety or within such tolerances as might have been recognized in industry at time in question, but contained, in substantial part, silk and rayon, "all worsted" fabric aforesaid, designation of which as such word "twist" in no wise modified, was not, as understood by trade and purchasing public from use

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of unqualified term aforesaid, of wool entirely, with small percentage of rayon for decorative purposes, or of wool entirely within such tolerances as above described, but was composed in substantial part of other material or materials, and, while many of fabrics generally referred to as above set forth were all wool, number were included therein which were not thus composed in their entirety;

With tendency and capacity, through acts and practices aforesaid in connection with securing of representatives and offer and sale of its said products in commerce, in making such false and misleading representations with regard to free garments, salesmen's earnings and composition of fabrics involved, to induce substantial number of members of purchasing public to become its representatives and agents, and to induce many members of said public to purchase its said products because of mistaken and erroneous beliefs engendered by representations aforesaid, and thereby unfairly to divert trade in such commerce to it from its competitors; to their injury and that of the public:

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

Before *Mr. William C. Reeves* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. John M. Russell, *Mr. Merle P. Lyon* and *Mr. S. Brogdyne Teu, II* for the Commission.

Mr. Henry Junge, of Hickey, Hall & Junge, 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 Fairbanks Tailoring Co., a corporation, 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, Fairbanks Tailoring Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2286 Wabansia Street in the city of Chicago in said State.

PAR. 2. Respondent, Fairbanks Tailoring Co., is and for many years last past has been, engaged in the business of selling and distributing, among other items of merchandise, suits, overcoats, and other clothing for men. The sales of its products are made directly and through salespersons or canvassers to the purchasing public throughout the several States of the United States and in the District of Columbia. Respondent causes its said products when sold to be

transported from its said place of business in Chicago, Ill., to the purchasers thereof located in States of the United States other than the State of Illinois and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, has been and is in substantial competition with other corporations and with partnerships, firms, and persons likewise engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, for the purpose of inducing the purchase of its suits, overcoats and other clothing for men by members of the purchasing public, and in endeavoring to secure salespersons to procure consumers' orders therefor, respondent has from time to time inserted advertisements in newspapers, magazines, periodicals, other publications and in descriptive circulars, pamphlets, and other advertising media, circulated into and through States of the United States other than the State of Illinois.

In said advertisements respondent has made or caused to be made various representations concerning the quality and designs of the cloth used in making its products, the financial success its salespersons can and usually do make without canvassing or experience, and its gifts of suits or topcoats to them free of cost, also concerning the nature and character of its business, among which are the following:

Order your new suit or topcoat tailored to your measure by Fairbanks, from the finest all wool fabrics.

Men's clothes tailored to measure of all wool—\$19.50 up.

"All worsted"—"all wool" on labels attached to its samples.

Start making money the day outfit arrives.

Openings for men. No Experience Necessary.

Make up to \$10.00 in one Day without canvassing.

There is Mr. Tyron of Michigan for example. He is now 68 years old and has been with us for 12 years. He is one of our successful salesmen often making as high as \$10 or more a day. These are just a few of the hundreds of men depending on the Fairbanks line.

Even if you sell only two suits per day, you will make up to \$60.00 in a week—Besides Getting Your New Suit Free of Cost.

A New Suit or Topcoat for You Free of cost. * * * Free Suit Offer.

By far the most elaborate and fastest selling line in the country.

Tropical worsted—rayon design.

The statements made by respondent as aforesaid purport to be descriptive of its merchandise, and of the financial success salespersons can and do make by becoming its agents and serve as representations to the purchasing public that the material respondent uses in making its suits, overcoats and other clothing for men is composed wholly of "wool"; that respondent's salespersons can and

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usually do make \$10 per day without canvassing and without experience; that respondent gives its salespersons suits or topcoats free of cost; that the line of suits, topcoats and other clothing for men offered for sale and sold by respondent is the fastest selling line in the country; and that some of the materials it uses are of rayon design.

PAR. 5. In truth and in fact the representations made by respondent as hereinbefore set out and the impressions and inferences thereby created in the mind of the public are false and misleading, in that all of the suits, overcoats, and other clothing offered for sale and sold by respondent are not made from material composed wholly of wool, but many of said garments are composed in substantial part of cotton, rayon, and other fibers; that respondent's salespersons or agents cannot and do not usually and consistently make up to \$10 per day in normal times and under normal conditions without canvassing and without experience; such agents are expected to and do canvass to sell respondent's said products; respondent does not give its salespersons suits or topcoats free but such "free gifts" are in fact bought and paid for in the services performed by said salespersons or agents in the sale of said merchandise for respondent. The line of products respondent offers for sale and sells is not the most elaborate and the fastest selling line in the country. The so-called rayon design is only a distinctive stripe, and not a design, one strand of which is rayon and the other strand cotton.

PAR. 6. There are now and have been competitors of respondent selling and distributing suits, overcoats, and other clothing for men, in commerce between and among the various States of the United States and in the District of Columbia, who do not, in the offering for sale and sale of their products, misrepresent the nature, character, quality, or popularity of their products, or the method or manner of, or compensation paid for, the sale or distribution of said products, and who do not represent that men's suits or topcoats or other clothing or other articles are given away free of cost to their salespersons or others, 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, overcoats and other clothing for men, as hereinbefore set out, have 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, overcoats, and other clothing for men are made wholly of wool; that its said agents can and usually do make \$10 per day without canvassing and without experience; that respondent gives its salespersons suits or topcoats free of cost; that

the line of suits, overcoats, and other clothing for men offered for sale and sold by respondent is by far the most elaborate and the fastest selling line in the country; and that the design of some of the material respondent uses is of rayon.

On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been and is induced to purchase suits, overcoats, and other clothing for men from respondent, and thereby trade has been and is diverted unfairly to respondent from competitors named in paragraphs 3 and 6 hereof. As a result thereof, injury has been and is now 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. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and 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 August 4, 1938, issued its complaint in this proceeding and thereafter caused it to be duly served on the respondent Fairbanks Tailoring Co., a corporation, charging it 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 respondent's answer thereto, at Chicago, Ill., on November 4, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by Merle P. Lyon, attorney for the Commission, and in opposition to the allegations of said complaint by Henry Junge of the firm of Hickey, Hall & Junge, attorneys for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and thereafter at Chicago, Ill., on May 12, 1939, additional testimony and other evidence in opposition to the allegations of said complaint were introduced by said Henry Junge on behalf of the respondent, and in support of the allegations of said complaint by S. Brogdyne Teu, II, attorney for the Commission, before Arthur F. Thomas, another examiner of the Commission theretofore duly designated by it, and all of the aforesaid 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, briefs in support of the complaint and in opposition thereto, no

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request for oral argument having been made; 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 Fairbanks Tailoring Co. is a corporation organized, existing and doing business under the laws of the State of Illinois, with its principal place of business located at 2286 Wabansia Street in the city of Chicago, in said State. Respondent is now, and for a number of years prior to the date of the issuance of the complaint in this proceeding has been, engaged in the business of tailoring suits, overcoats, and other clothing for men on individual orders, and of suits and coats for women on individual orders. It has caused and now causes the wearing apparel produced by it, when sold, to be transported from its place of business in Chicago, Ill., through and into various other States of the United States to the purchasers thereof. In the course and conduct of its said business, the respondent has been, and is now, in competition with various other corporations and with persons, firms and partnerships also engaged in the sale and distribution of tailored wearing apparel in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent distributes the wearing apparel produced by it through salesmen or agents who solicit and accept orders for garments from members of the purchasing public. Respondent supplies its agents with order blanks, samples of materials from which the wearing apparel is to be made, and instructs them as to the manner and method of taking measurements for such wearing apparel. When orders are secured by such salesmen or agents they are transmitted to the respondent at its place of business in Chicago, Ill., where the garments are tailored and in turn shipped to the purchasers at their respective points of location.

PAR. 3. Prior to January 11, 1937, respondent caused advertisements to be published in magazines and other periodicals having a general circulation throughout the United States in which the announcement was made that respondent had openings for ambitious men to wear suits and overcoats tailored to measure by respondent and to act as agents for respondent in selling suits and overcoats. In said advertisements it was represented that such agents could make up to \$10 per day by selling respondent's clothing without canvassing and that experience was not necessary. Respondent also referred in said advertisements to a so-called free suit offer. Literature sent to persons

responding to these advertisements described the material from which wearing apparel produced by the respondent was made as "The finest of wool fabrics," "all worsted," and "all wool."

PAR. 4. In the spring of 1938 respondent distributed to its salesmen or agents books containing samples of materials for use in soliciting orders for wearing apparel. These sample books contained a description of each of the samples therein, and many of the samples were described as "all wool," and "all worsted." These samples were displayed to the purchasing public by said salesmen and agents.

PAR. 5. The aforesaid acts, practices, and representations on the part of the respondent in connection with the sale and distribution of its said wearing apparel in said commerce had the tendency and capacity to lead prospective salesmen or agents to believe that they could secure from the respondent a suit "free" and without cost or condition; that inexperienced salesmen could earn as much as \$10 per day by selling respondent's wearing apparel without canvassing; and to lead purchasers and prospective purchasers of said wearing apparel to whom said sample books were displayed by said salesmen and agents to believe that the materials described in said sample books as "all worsted" and "all wool" were in fact composed entirely of wool.

PAR. 6. The suits referred to in respondent's said "free suit offer" were not free and were not delivered to persons responding to said advertisements without cost and unconditionally, but said suits were delivered only to such persons as sold a specified number of respondent's garments, usually 12, within a stated period of time. Said suits described as "free" were earned by the persons securing the same through their services in selling respondent's said garments and were not a gift or gratuity.

Inexperienced salesmen or agents could not earn \$10 per day selling respondent's garments without canvassing. In order to earn \$10 a day or any sum approximating that sum a salesman would have to be consistently employed in the sale of garments for the respondent which requires canvassing.

PAR. 7. Among the samples of fabrics contained in said sample book, prepared and distributed among its salesmen and agents for display among prospective purchasers in promoting the sale of its said garments in the spring of 1938 as above set out, was a sample labeled and described as follows:

Very stylish green all wool Herringbone with brown overlaid.

This sample and the above statement were displayed to prospective customers in soliciting and securing orders for garments made from

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the fabric shown by this sample. The fabric from which garments were made, when orders were received for garments from this sample, was not all wool as represented by the respondent, but was in truth and in fact composed in substantial part of materials other than wool, namely, silk and rayon. The wool content of this fabric was approximately 80 percent in one direction and 50 percent in the other, according to a report of a microscopic methods test made by the National Bureau of Standards of the United States Department of Commerce. A report of a different test made by a private testing agency shows a wool content of 84.9 percent, silk 12.6 percent, rayon 2.5 percent. Both of these tests show, and the Commission finds that the fabric was not composed of wool in its entirety or within such tolerances as might have been recognized in the industry at the time the fabric was so labeled and described. Respondent's representation that this fabric was "all wool" was false and misleading.

Another sample fabric displayed in the spring of 1938 sample book and used and displayed by respondent's salesmen and agents in soliciting and securing orders made from the fabric shown by this sample, in promoting the sale of respondent's garments, was one labeled and described as follows:

Atlas long wearing all worsted twist with rayon design.

The term "all worsted," without qualification, is understood in the trade and by the purchasing public to mean a fabric made entirely of wool. The use of the word "twist" in no wise modifies the term "all worsted." The term "rayon design" does not indicate or mean to the purchasing public that the fabric contains any substantial percentage of materials other than wool, as this term indicates only a small percentage of rayon for decorative purposes, usually less than 2 percent. This fabric was not composed entirely of wool and a small percentage of rayon for decorative purposes, as indicated by the label on the sample, but was in truth and in fact composed in substantial part of a material or materials other than wool. The wool content of this fabric was 30 percent according to the report of a microscopic method test made by the National Bureau of Standards, United States Department of Commerce. This test shows, and the Commission finds, that this fabric was not composed of wool in its entirety, with a small percentage of rayon for decorative purposes, or within such tolerances as might have been recognized in the industry at the time the fabric was so labeled and described. Respondent's representation that this fabric was "all worsted" was false and misleading.

PAR. 8. Prior to the issuance of the spring of 1938 sample book, the respondent labeled and described a number of samples of fabrics

shown in sample books as "all worsted" which were not in truth and in fact composed entirely of wool, but which fabrics contained a substantial percentage of materials other than wool. The respondent in its advertising matter referred to such samples of fabrics generally, including the number branded "all worsted" and composed in substantial part of materials other than wool, as "all wool," "wool," "woolen," and "100 percent all wool." These representations, as well as the "all worsted" labels, were false and misleading when applied to the line of samples as a whole for, while many of the fabrics were all wool, a number, as above set forth, were included therein which were not composed in their entirety of wool.

PAR. 9. There are among competitors of respondent various persons, partnerships and corporations who offer for sale and sell tailored garments for men and women in commerce between and among the several States of the United States, many who do not misrepresent the wool content of the fabrics from which said garments are made and who do not in any manner misrepresent or exaggerate the earnings of their salesmen or agents and who do not designate or describe as "free" suits and overcoats not given as a gift or gratuity but as additional compensation for selling garments.

PAR. 10. The acts and practices of respondent, in connection with the securing of representatives and in connection with offering for sale and selling its said products in commerce between and among the several States of the United States and in the District of Columbia, in making and using the false and misleading representations hereinabove set out with regard to "free" suits and overcoats, the earnings of salesmen and the composition of the fabrics from which the garments offered for sale and sold are made, have the tendency and capacity to induce a substantial number of members of the purchasing public to become and act as representatives and agents for respondent, and to induce many members of the purchasing public to purchase respondent's said products because of the mistaken and erroneous beliefs engendered by said false and misleading representations, and thereby unfairly to divert trade in said commerce to respondent from its competitors, to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts, practices, and representations of the respondent, Fairbanks Tailoring Co., are all to the prejudice and injury of the public and of competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before William C. Reeves and Arthur F. Thomas, examiners of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein, no request for oral argument having been made, 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 Fairbanks Tailoring Co., 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 overcoats for men, and suits and coats for women, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "all wool," "all worsted," or any other words indicating a fabric composed of wool in its entirety, to designate, describe or refer to fabrics, the fiber content of which is not composed wholly of wool; *provided, however*, that such words may be used to describe a fabric composed essentially of wool but containing a small percentage of material or materials for decorative purposes only, such as silk or rayon, when there is used in connection or conjunction with the words indicating an all wool fabric in letters of equal size and conspicuousness, words, such as "rayon decoration" or "rayon stripe," truthfully designating and describing the decorative material or materials used.

2. Using the word "free" or any other word or words of similar import or meaning to designate, describe, or refer to garments delivered to representatives or agents of the respondent as compensation for services performed in connection with the sale and distribution of respondent's products.

3. Representing that inexperienced representatives or agents engaged in the solicitation of orders for respondent's garments can make up to \$10 a day without canvassing.

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.

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IN THE MATTER OF

V. PORTNOY & SONS, INC., TRADING AS ROOSEVELT
MERCANTILE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3576. Complaint, Sept. 3, 1938—Decisions, Mar. 27, 1940*

Where a corporation engaged in sale of new and second-hand clothing and other merchandise to purchasers in various other States, pursuant to orders, in practically all cases, received through the mails in response to advertisements and advertising literature circulated by it as below set forth, and by customers who had had no opportunity to examine merchandise until delivered and who relied entirely upon its descriptions and depictions thereof in its advertising, in competition with others engaged in sale and distribution of such products in commerce, and including many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their products and truthfully represent nature of their business and business methods; in advertisements in many newspapers and periodicals having general circulation throughout the various States, and in advertising booklets, folders, pamphlets, and other forms of advertising literature which it in part directly distributed to members of purchasing public in various States and in part furnished to its customers, by whom same was placed in hands of said public—

- (a) Invited reader to "Be Your Own Boss!" and "Make 200% to 300% profit," operating "Quality used and new clothing business from your own store, home, or auto," with "No selling experience required" and "Catalogue Free," and to "Sell men's, women's, and children's clothing and shoes at big profits. Select from the big values in this new fall and winter catalog," etc., facts being it was impossible for purchasers of its said merchandise, because of unsatisfactory condition thereof as below set forth, to resell same at such profit, and it was difficult, in most instances, to resell same at any profit whatever, and in many cases resale thereof at any price whatsoever was impossible;
- (b) Represented, as aforesaid, that it shipped kind of merchandise depicted in such advertisements, and that single garments might be obtained in all sizes, colors, and styles, and that its said goods were of latest styles and that slightly used merchandise was always cleaned, pressed, and repaired by its own expert craftsmen and that it guaranteed to replace any goods not satisfactory, through such statements as "Always Finest Quality," "* * * All (coats) are good styled and slightly used. * * * Assorted sizes and colors," "Dresses Smartly Styled * * * Every one salable * * * assorted sizes * * *," etc., "Topcoats you can be proud to sell. * * * cleaned, repaired, and pressed by our own expert craftsmen," "Suits Genuine Wool! Only Slightly Used! * * * show their fine quality * * * Finely tailored * * * label of nationally known makers," etc., facts being pictures in advertising in question were not representative of merchandise sold by it, depicting frequently what appeared to be new, clean