

Syllabus

IN THE MATTER OF
EMPIRE STYLE DESIGNERS LEAGUE, INC. ET AL.

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

Docket 4136. Complaint, May 21, 1940—Decision, Sept. 17, 1940

Where a corporation, members of which were engaged in the creation of styles and the designing and making of patterns for women's fur coats and in the grading and copying of such patterns, and in the sale and distribution thereof in commerce, and which was formed with intent and effect of serving as clearing house for such members who acted in cooperation with it in matters as below indicated, and said members, who constituted dominant factors in business in question, and represented 75 percent of the output and sale of the products involved, and who, but for matters and things below set forth, would be naturally and normally in competition with each other, and with others in the business of producing patterns and gradings, and copies thereof, and in the sale thereof to customers throughout the several States and in the District of Columbia—

Entered into and carried out, as case might be, agreement, combination, and conspiracy with each other and with others including said corporation first referred to, to hinder and suppress competition in interstate sale and distribution of products in question and to create monopoly in themselves in the manufacture and sale thereof; and in pursuance of such agreement, combination and conspiracy,

- (1) Collectively and cooperatively arranged for and fixed uniform prices at which their said products were to be sold;
- (2) Collectively and cooperatively published, or caused to be published, said price lists in newspapers, periodicals, and circulars of general circulation, in various States and in the District of Columbia; and
- (3) Collectively and cooperatively adhered to such uniform prices at which their said products were to be sold as set forth in their price lists issued, exchanged and published as above described;

With the result that they sold at fixed and uniform prices to their respective customers, in the various States and in the District of Columbia, their said products and thus delivered same, and their customers and users thereof were forced and compelled to pay them prices in accordance with such arbitrarily fixed and maintained artificial price levels for products in question and were deprived, to their detriment, of normal and free competition between and among said members in the purchase of products in question, price competition between and among themselves in the sale of such articles was hindered and prevented, and power was placed in them to control and enhance prices thereof, and with tendency unduly to create in themselves monopoly in sale of patterns and in gradings and copies thereof, and with effect of unreasonably restraining commerce therein:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Mr. George W. Williams for the Commission.

Mr. Sydney U. Cohn, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Empire Style Designers League, Inc., a corporation, Sol Vogel, an individual doing business as Sol Vogel Fashion Imports, Alexander Greenstein and Abraham Fessler, individually and as copartners doing business as Greenstein Fur Modes, Samuel Handelman, an individual, Lazare T. Sherman, an individual, Mendel Levine, an individual, Octave Golos, an individual, Evangelista Petrocelli, an individual doing business as Van-Celli Fur Fashion Co., Anthony T. Sozio, an individual, Benedict Savio, an individual, doing business as Savio Fur Modes, Bern Publishers, Inc., a corporation doing business under the trade name of American-Mitchell Fashion Publishers, hereinafter referred to as respondents, have 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, Empire Style Designers League, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 276 Fifth Avenue in the city of New York, State of New York.

Its membership consists of the corporations, partnership, firms, and individuals herein named in paragraph 2, all of whom were and are engaged in the creation of styles and the designing and making of patterns for women's fur coats and the grading and copying of said patterns, and in the sale and distribution of the same in constant course of trade in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to such sales, and as a part thereof, said respondents regularly have shipped, and do ship or cause to be delivered such products to their customers, at their respective places of business, located at various points in the several States of the United States, other than the State of New York.

Said League was formed with the purpose and effect of serving as a clearing house for, and with the joint cooperation of, its members, who, through respondent League engage in attempts to, and do, fix uniform prices for their said products, and do otherwise advance their mutual interests in connection with their said business.

PAR. 2. The following named respondents constitute the membership of said League:

1. Respondent Sol Vogel is an individual doing business as Sol Vogel Fashion Imports, with his office and principal place of business at 330 Seventh Avenue, New York, N. Y.

2. Respondents Alexander Greenstein and Abraham Fessler, individually, and as copartners doing business as Greenstein Fur Modes, with their office and principal place of business at 345 Seventh Avenue, New York, N. Y.

3. Respondent Samuel Handelman is an individual with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

4. Respondent Lazare T. Sherman is an individual with his office and principal place of business at 370 Seventh Avenue, New York, N. Y.

5. Respondent Mendel Levine is an individual, with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

6. Respondent Octave Golos is an individual with his office and principal place of business at 330 Seventh Avenue, New York, N. Y.

7. Respondent Evangelista Petrocelli is an individual doing business as Van-Celli Fur Fashion Co., with his office and principal place of business at 127 West Thirtieth Street, New York, N. Y.

8. Respondent Anthony T. Sozio is an individual, with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

9. Respondent Benedict Savio is an individual doing business as Savio Fur Modes with his office and principal place of business at 352 Seventh Avenue, New York, N. Y.

10. Respondent Bern Publishers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, doing business under the trade name of American-Mitchell Fashion Publishers, with its office and principal place of business at 360 Seventh Avenue, New York, N. Y.

PAR. 3. Said member respondents, in the course and conduct of their respective businesses, as hereinbefore described, but for the matters and things hereinafter set forth, would be naturally and normally in competition with each other and/or in competition with other individuals, copartners, and corporations also engaged in the business of producing patterns and gradings and copies thereof, and in the sale thereof to customers located throughout the several States of the United States and in the District of Columbia. The said member respondents have at all times herein mentioned, and are now, the dom-

inant factors in said business, representing approximately 75 percent of the output and sale of said products.

PAR. 4. The said member respondents hereinbefore named and described, during the last 3 years, and to the date of this complaint, have entered into and carried out an agreement, combination, and conspiracy with each other and with other persons, firms, and corporations, including respondent Empire Style Designers League, Inc., to hinder and suppress competition in the interstate sale and distribution of said products, hereinbefore mentioned and described in paragraph 1, and to create a monopoly in the manufacture and sale of said products in the United States in said member respondents. Pursuant to said agreement, combination, and conspiracy, said respondents have collectively and cooperatively performed within the time hereinbefore mentioned, the following acts and practices, to wit:

1. Arranged for and fixed uniform prices at which their said products were and are to be sold.

2. Published, or caused said prices to be published in lists, newspapers, magazines, and other periodicals and circulars with general circulation in the State of New York and in other States of the United States, and in the District of Columbia; and

3. Adhered to the said uniform prices at which their said products are to be sold as set forth in their price lists issued, exchanged, and published as aforesaid.

PAR. 5. Said member respondents, as a result of the activities described in paragraph 4 herein, have sold their said products at fixed and uniform prices to their respective customers located in the various States of the United States and in the District of Columbia, and delivered the same as aforesaid.

PAR. 6. As a result of such agreement, combination, and conspiracy, and the acts and practices performed thereunder, and pursuant thereto, by said respondents, as hereinbefore set forth, the customers and users of said products have been, and now are, forced and compelled to pay said member respondents prices at which their products are arbitrarily fixed and maintained at artificial levels, and have been and are now deprived, to their detriment, of normal and free competition between and among said member respondents in the purchase of said products.

PAR. 7. The acts and practices of the said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented price competition between and among said member respondents in the sale of their said products in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in said

member respondents power to control and enhance prices of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, and constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 21, 1940, issued, and on May 23, 1940, served its complaint in this proceeding upon respondents, Empire Style Designers League, Inc., a corporation, Sol Vogel, doing business as Sol Vogel Fashion Imports, Alexander Greenstein and Abraham Fessler, individually, and as copartners doing business as Greenstein Fur Modes, Samuel Handelman, Lazare T. Sherman, Mendel Levine, Octave Golos, individually, Evangelista Petrocelli, doing business as Van-Celli Fur Fashion Co., Anthony T. Sozio, individually, Benedict Savio, doing business as Savio Fur Modes, and Bern Publishers, Inc., a corporation, and also as trading under the name of American-Mitchell Fashion Publishers, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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, Empire Style Designers League, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 276 Fifth Avenue in the city of New York, State of New York.

Its membership consists of the corporations, partnerships, firms, and individuals herein named in paragraph 2, all of whom were and are engaged in the creation of styles and the designing and making of patterns for women's fur coats and the grading and copying of said patterns, and in the sale and distribution of the same in constant course of trade in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to such sales, and as a part thereof, said respondents regularly have shipped and do ship or cause to be delivered such products to their customers, at their respective places of business, located at various points in the several States of the United States, other than the State of New York.

Said League was formed with the purpose and effect of serving as a clearing house for, and with the joint cooperation of, its members, who, through respondent League engage in attempts to, and do, fix uniform prices for their said products, and do otherwise advance their mutual interests in connection with their said business.

PAR. 2. The following named respondents constitute the membership of said League:

1. Respondent Sol Vogel is an individual doing business as Sol Vogel Fashion Imports, with his office and principal place of business at 330 Seventh Avenue, New York, N. Y.

2. Respondents, Alexander Greenstein and Abraham Fessler, individually, and as copartners doing business as Greenstein Fur Modes, with their office and principal place of business at 345 Seventh Avenue, New York, N. Y.

3. Respondent Samuel Handelman is an individual with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

4. Respondent Lazare T. Sherman is an individual with his office and principal place of business at 370 Seventh Avenue, New York, N. Y.

5. Respondent Mendel Levine is an individual, with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

6. Respondent Octave Golos is an individual with his office and principal place of business at 330 Seventh Avenue, New York, N. Y.

7. Respondent Evangelista Petrocelli is an individual doing business as Van-Celli Fur Fashion Co., with his office and principal place of business at 127 West Thirtieth Street, New York, N. Y.

8. Respondent Anthony T. Sozio is an individual, with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

9. Respondent Benedict Savio is an individual doing business as Savio Fur Modes with his office and principal place of business at 352 Seventh Avenue, New York, N. Y.

10. Respondent Bern Publishers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of New York, doing business under the trade name of American-Mitchell Fashion Publishers, with its office and principal place of business at 360 Seventh Avenue, New York, N. Y.

PAR. 3. Said member respondents, in the course and conduct of their respective businesses, as hereinbefore described, but for the matters and things hereinafter set forth, would be naturally and normally in competition with each other and/or in competition with other individuals, copartners, and corporations also engaged in the business of producing patterns and gradings and copies thereof, and in the sale thereof to customers located throughout the several States of the United States and in the District of Columbia. The said member respondents have at all times herein mentioned, and are now, the dominant factors in said business, representing approximately 75 percent of the output and sale of said products.

PAR. 4. The said member respondents hereinbefore named and described, during the last 3 years, and to the date of the complaint, have entered into and carried out an agreement, combination, and conspiracy with each other and with other persons, firms, and corporations, including respondent Empire Style Designers League, Inc., to hinder and suppress competition in the interstate sale and distribution of said products, hereinbefore mentioned and described in paragraph 1, and to create a monopoly in the manufacture and sale of said products in the United States in said member respondents. Pursuant to said agreement, combination, and conspiracy, said respondents have collectively and cooperatively performed, within the time hereinbefore mentioned, the following acts and practices, to wit:

1. Arranged for and fixed uniform prices at which their said products were and are to be sold.

2. Published, or caused said prices to be published, in lists, newspapers, magazines, and other periodicals and circulars with general circulation in the State of New York and in other States of the United States, and in the District of Columbia; and

3. Adhered to the said uniform prices at which their said products were and are to be sold as set forth in their price lists issued, exchanged, and published as aforesaid.

PAR. 5. Said member respondents, as a result of the activities described in paragraph 4 herein, have sold their said products at fixed and uniform prices to their respective customers located in the various States of the United States and in the District of Columbia, and delivered the same as aforesaid.

PAR. 6. As a result of such agreement, combination, and conspiracy and the acts and practices performed thereunder, and pursuant thereto, by said respondents, as hereinbefore set forth, the customers and users

of said products have been, and now are, forced and compelled to pay said member respondents prices at which their products are arbitrarily fixed and maintained at artificial levels, and have been and are now deprived, to their detriment, of normal and free competition between and among said member respondents in the purchase of said products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public; have a dangerous tendency to, and have actually hindered and prevented price competition between and among respondents in the sale of patterns for women's fur coats and in the sale of gradings and copies of same in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices in said products; have tended unduly to create in respondents a monopoly in the sale of patterns and in the gradings and copies thereof in such commerce; have unreasonably restrained such commerce in said patterns and in the gradings and copies thereof and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondents, which substitute answer admits all of the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Empire Style Designers League, Inc., a corporation, Sol Vogel, doing business as Sol Vogel Fashion Imports, Alexander Greenstein, and Abraham Fessler, individually, and as copartners doing business as Greenstein Fur Modes, Samuel Handelman, Lazare T. Sherman, Mendel Levine, Octave Golos, Evangelista Petrocelli, doing business as Van-Celli Fur Fashion Co., Anthony T. Sozio, Benedict Savio, doing business as Savio Fur Modes, and Bern Publishers, Inc., a corporation, and also as trading under the name of American-Mitchell Fashion Publishers, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the

873

Order

offering for sale and distribution of patterns for women's fur coats, gradings or copies thereof, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from performing, pursuant to agreement or understanding, or collectively or cooperatively, the following acts or practices:

1. Arranging for and fixing uniform prices at which their said products are to be sold.

2. Publishing or causing said fixed prices to be published in lists, newspapers, magazines, or other periodicals and circulars; and

3. Adhering to fixed prices at which their said products are to be sold.

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

IN THE MATTER OF
BENTON ANNOUNCEMENTS, INC.

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

Docket 3425. Complaint, May 13, 1938—Decision, Sept. 18, 1940

Where a corporation engaged in printing stationery for social and business purposes, including invitations, calling cards, letterheads, envelopes, and similar products, and in sale and distribution thereof to purchasers in other States and in the District of Columbia, in competition with others engaged in similar sale and distribution of stationery products for social and business purposes, and including those who produce and sell genuine engraved stationery products and truthfully advertise themselves as engravers and their products as engraving, and others who sell non-engraved stationery products and do not thus represent themselves; in circulars and other advertising matter such as letters of solicitation, price lists, sample books of wedding announcements, cards, and other social forms circulated throughout the United States to customers and prospective customers, including prospective brides and bridegrooms—

Represented itself as an engraver and its products as engraved and genuine plate engraving, through use of such words and statements as "You may have the finest plate engraved wedding stationery at half the usual cost," "Genuine plate engraving," "Compare this price with other fine engravers," "It is a pleasure indeed to send you these truly fine samples of engraving art, etc.," "The most economical method devised for producing genuine plate engraving";

Facts being its stationery was produced by printing on printing press with printing thereafter "bumped up" or embossed by use of plate, engraved by pantograph method, and it did not print from plate through inking same and printing therefrom as done by genuine engravers, but used same only for embossing or raising printed letters above plane of paper, plate was used dry and not inked for each impression as essential to true engraving process, involving taking of impression on blank paper from inked plate in one operation, and its said products could not properly be represented or described as engraving or engraved stationery, cost of which greatly exceeds that of producing stationery otherwise comparable, by process employed by it or any printing process, and was not such engraving as long understood from words "engraving" or "engraved," used in connection with business or social stationery, by trade and consuming public as meaning such products containing letters, etc., raised from general plane of the stationery surface through use under pressure of specially engraved, cut or carved metal plates, used as above indicated, and for which genuine engraved stationery substantial portion of purchasing public has decided preference over stationery produced by it or any similar process;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that it owned or operated an engraving company and was in the business of producing and selling engraved or plate engraved stationery, with letters, words, and designs contained thereon engraved or