

Complaint

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IN THE MATTER OF

JULIAN S. COHN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4106. Complaint, Apr. 25, 1940—Decision, Mar. 19, 1941*

Where an individual engaged in interstate sale and distribution of handkerchiefs—Represented, orally and by correspondence and otherwise, that he was the manufacturer of said products, facts being it was his practice to have raw materials secured by him, in designs and patterns desired, from yardage mills, made up by various concerns under contract with him in accordance with specifications which he submitted and which included such matters as sizes, widths, and lengths desired, and character and manner of stitching, etc., and plants in which his said products were thus made were owned, operated, and controlled by the various owners and not by him, and he was in no sense such a manufacturer, from whom a substantial portion of purchasing public prefers to purchase direct as affording in its belief, savings of middleman's or wholesaler's profit;

With effect of misleading and deceiving purchasers of such products, and of causing them mistakenly and erroneously to believe that he was a manufacturer of handkerchiefs, and, as result of such belief, to purchase his said product:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Mr. Nathaniel Phillips and *Mr. S. S. Goldsmith*, of New York City, 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 Julian S. Cohn, an individual, hereinafter referred to as respondent, has violated the provisions of 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, Julian S. Cohn, with his office and principal place of business at 260 Fourth Avenue, New York, N. Y., is now and for more than 2 years last past has been engaged in the sale and distribution of handkerchiefs.

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In the course and conduct of his said business, respondent has caused his product when sold to be transported from his place of business in the State of New York to the purchasers thereof located in the various States of the United States and the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in his said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, and for the purpose of inducing the purchase of his said product, respondent has represented that he is a "manufacturer of handkerchiefs." The term "manufacturer of handkerchiefs" is used by respondent on the business stationery used by him in the course and conduct of his business in the solicitation of orders for his said product. The use of the term "manufacturer of handkerchiefs" or the use of the word "manufacturer" is a representation that respondent owns, operates, or controls a factory or mill wherein the product which he offers for sale and sells is made or manufactured.

PAR. 3. The aforesaid representation is false, deceptive, and misleading. In truth and in fact, respondent does not now make or manufacture, nor has he ever made or manufactured, said products, but buys the goods from which said handkerchiefs are made, has them made elsewhere under contracts, and fills orders for handkerchiefs received by him with products thus made and not made or manufactured in any mill or factory owned, operated, or controlled by respondent.

PAR. 4. There is a preference on the part of certain purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia for buying said products and like or similar products directly from the manufacturer or mill producing the same. There is an impression and belief existing among certain of said purchasers or prospective purchasers of said products that a saving of the middleman's profit may be obtained, that a more uniform line of goods may be purchased, and that other advantages may be obtained by purchasing goods directly from a manufacturer or mill operator.

The use by the respondent of the word "manufacturer" and the phrase "manufacturer of handkerchiefs" as hereinabove alleged has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers of said products by causing them mistakenly and erroneously to believe that respondent actually owns, operates, or directly and absolutely controls a mill or factory in which his said handkerchiefs are made or manufactured and the tendency and capacity

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to, and does, cause a substantial portion of the purchasing public to purchase respondent's said products on account of said mistaken and erroneous belief.

PAR. 5. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute 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 April 25, 1940, issued its complaint in this proceeding and thereafter caused it to be served upon the respondent, Julian S. Cohn, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William T. Chantland, attorney for the Commission, and in opposition to the allegations of the complaint by Nathaniel Phillips and S. S. Goldsmith, attorneys for the respondent, before Randolph Preston, an examiner for 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, and briefs in support of the complaint and in opposition thereto; 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, Julian S. Cohn, is an individual with an office and place of business now located at 15 West Thirty-seventh Street, New York, N. Y. Respondent is now and for more than 2 years last past has been engaged in the sale and distribution of handkerchiefs.

PAR. 2. Respondent, in the course and conduct of his said business, has caused his said product, when sold, to be transported from his said place of business in the State of New York to purchasers thereof located in various States of the United States other than New York

and in the District of Columbia. Respondent maintains, and has at all times herein referred to maintained, a course of trade in said handkerchiefs in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of his said business and for the purpose of inducing the purchase of his product, has represented orally and by correspondence and otherwise that he was the manufacturer of the handkerchiefs offered for sale and sold by him in said commerce.

PAR. 4. Prior to July 1, 1940, it was the practice of respondent to secure from designers and artists the types of designs or patterns which he desired to have made into handkerchiefs. These designs or patterns were then submitted to yardage mills, and the necessary yardage materials were purchased from such mills to be made up into the quantities of handkerchiefs desired by respondent. After securing the raw yardage materials in the patterns or designs from which respondent desired his handkerchiefs to be made, he placed contracts with various concerns to make the handkerchiefs according to specifications submitted by him when placing his orders or entering into contracts with said mills. The specifications which respondent gave such manufacturers included specific instructions as to sizes, widths, and lengths desired, and the character and manner of stitching the edges thereof and as to how any embroidery or other decorative work was to be done thereon. After the handkerchiefs were thus made for respondent, they were delivered to him at his place of business for packing, sale, and distribution.

Prior to July 1, 1940, the manufacturing plants in which respondent's products were produced were owned, operated, and controlled by the various owners thereof, and not by the respondent, and the respondent was in no sense the manufacturer of the handkerchiefs offered for sale and sold by him. Prior to July 1, 1940, the only connection respondent had with the several manufacturing plants in which his handkerchiefs were manufactured, other than to contract with the operators of such factories to make handkerchiefs for him as above stated, was a minority stock interest in the United Handkerchief Co., a corporation, of Passaic, N. J., which manufactured, under a contract with the respondent, a substantial quantity of the handkerchiefs sold by the respondent. Through a contract effective July 1, 1940, after the issuance of the complaint in this proceeding, respondent exchanged his stock interest in said corporation for certain handkerchief-making machines operated by said corporation in its factory. According to the terms of said contract, respondent is to pay the

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salaries, social security costs, and workmen's compensation insurance premiums of certain of the employees of said corporation whenever they operate the machines transferred to respondent in making handkerchiefs for the respondent. Said contract also provides that respondent is to pay a rental for the space occupied by said machines, and a salary to Benjamin Levine, an officer of and principal stockholder in said corporation, for superintending the operation of said machines when operated on respondent's handkerchiefs. At the time of the conclusion of hearings in this proceeding, no payment of rent to the corporation or of salary to Benjamin Levine had been made. The United Handkerchief Co., under the control and direction of Benjamin Levine and his wife, the principal stockholders in said corporation, has continued to control and operate the factory wherein the said machines are located.

PAR. 5. The use, prior to July 1, 1940, by respondent of the representation that he was the manufacturer of the handkerchiefs offered for sale and sold by him in said commerce was misleading and deceptive, for in truth and in fact respondent was not in any sense the manufacturer of such handkerchiefs.

PAR. 6. A substantial portion of the purchasing public has a preference for products purchased directly from the manufacturer or mill producing them, because it believes that by buying direct from the manufacturer a savings of middleman's or wholesaler's profit is effected.

PAR. 7. The use by respondent of the representation that respondent is a manufacturer of handkerchiefs, in connection with the offering for sale, sale, and distribution of his handkerchiefs, has the tendency and capacity to mislead and deceive, and has misled and deceived, purchasers of such products, and to cause, and has caused, such purchasers mistakenly and erroneously to believe that respondent was a manufacturer of handkerchiefs and, as a result of said mistaken and erroneous belief, to purchase respondent's said handkerchiefs.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, were all to the prejudice and injury of the public and constitute 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, the answer to

respondent, testimony and other evidence taken before Randolph W. Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by William T. Chantland, counsel for the Commission, and by Nathaniel Phillips, counsel for the respondent, 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, Julian S. Cohn, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of handkerchiefs in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "manufacturer" or the phrase "manufacturer of handkerchiefs," or any other word or phrase of similar import or meaning, to designate, describe, or refer to the business conducted by respondent, unless and until respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are made or manufactured by him.

2. Representing, directly or by implication, through the use of the word "manufacturer" or the phrase "manufacturer of handkerchiefs," or any other word or phrase of similar import or meaning, that respondent is the manufacturer of the products offered for sale and sold by him, unless and until said respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are made or manufactured by him.

It is further ordered, That the 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.

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IN THE MATTER OF
SCHRADER CUTLERY COMPANY

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

Docket 4118. Complaint, Apr. 26, 1940—Decision, Mar. 19, 1941

Where a corporation engaged in manufacture and in interstate sale and distribution of various articles of cutlery—

Designated and marked as "Scout" and "SUPER SCOUT" pocket knives of certain general design and appearance, notwithstanding they were not those long made or distributed under supervision of the Boy Scouts of America, or approved, indorsed or sponsored by that organization and marked with words "Scout" or "Boy Scout," with or without other marks and insignia identifying them as standard Boy Scout equipment, and uniformly referred to as "Scout Knife";

With capacity and tendency to mislead and deceive purchasing public into belief that its said knives had been approved, indorsed or sponsored by the Boy Scouts of America and were a part of their standard equipment, for the purchase of which there is a marked preference on the part of a substantial portion of purchasing public over products which are not so sponsored or approved, and with effect of causing a substantial part of public to purchase its said knives because of such belief:

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

Mr. Joseph C. Fehr for the Commission.

Embler & Embler, of Walden, N. Y., 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 Schrade Cutlery Co., a corporation, hereinafter referred to as respondent, has violated the provisions of 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, Schrade Cutlery Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Walden, in the State of New York.