

IN THE MATTER OF
SHEPHERD'S TAILORING COMPANY, 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 4716. Complaint, Feb. 26, 1942—Decision, June 8, 1942

Where a corporation and two individuals, its officers and directors, engaged in competitive interstate sale and distribution of men's wearing apparel and other merchandise—

- (a) Sold and distributed garments by means of sales plans which involved the operation of a game of chance, gift enterprise, or lottery scheme, and included a so-called "Club Plan" under which they furnished each participating purchaser with a contract providing for the sale by them to him of a suit for the sum of \$39, of which \$1 was to be paid when the contract was delivered and \$1 each week thereafter until the full sum had been paid, each contract being printed with a so-called "Ledger No." for use as a lottery number under an agreement by which those purchasers whose numbers, or last three digits thereof, corresponded with the last three digits of the Treasury report as published in a Philadelphia paper, would be entitled to a suit or overcoat without additional payment, all others paying the full \$39 retail selling price;

With the result that many persons were attracted by the element of chance involved in their said sales plan, under which the amount paid by the ultimate consumer was determined wholly by lot or chance, and there was involved a game of chance to procure an article of merchandise at less than contract price, and trade was unfairly diverted from many competitors who do not use any such plan or method; and

- (b) Falsely represented price of their merchandise, nature of their business and merchandise itself through such statements as "One \$39.00 price"; "Custom Tailors since 1907"; "Our stock consists of hundreds of patterns of fine imported and domestic suitings and overcoatings for \$39.00"; facts being they did not always sell the garments in question for said sum, but in many instances required additional payments; they had been in business only since 1940; and they did not carry hundreds of patterns, or any large number from which their customers might select a suit or overcoat for said price;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, thereby inducing it to purchase said products, as a result whereof trade was unfairly diverted to them from their competitors:

Held, That said lottery sales plan violated the public policy of the United States Government, and that such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Mr. J. W. Brookfield, Jr. for the Commission.

Mr. Harris I. Weisbord, of Philadelphia, Pa., for respondents.

1346

Complaint

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 Shepherd's Tailoring Co., Inc., a corporation, formerly Small's, Inc., a corporation, and Louis Small, Walter H. Hahn, and William Trignani, individually, and as officers and directors of Shepherd's Tailoring Co., Inc., 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, Shepherd's Tailoring Co., Inc., is a Corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania and until August 8, 1941, its corporate name was Small's, Inc., at that time its name being changed to the present designation. Its principal place of business is located at 1102 Walnut Street in the city of Philadelphia, State of Pennsylvania. Respondents Louis Small, Walter H. Hahn, and William Trignani, are officers and directors of the corporate respondent, Shepherd's Tailoring Co., Inc., and formulate, control and direct the policies, acts and practices of said corporate respondent. The respondents have acted in concert and in cooperation and conjunction with each other in performing the acts and practices hereinafter alleged.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of men's wearing apparel and other merchandise from their said place of business, through the solicitation of orders for such merchandise from persons living in various States of the United States. Respondents fill such orders by transporting said merchandise or causing same to be transported from their said place of business in Philadelphia, Pa., to purchasers thereof at their respective points of location in various States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said garments in commerce between and among the various States of the United States.

In the course and conduct of their business, respondents are and have been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States.

Complaint

34 F. T. C.

PAR. 3. In the course and conduct of their business, as described in paragraph 1 hereof, respondents are now and have been selling and distributing said garments to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said sales plans or methods is substantially as follows:

. Members of the purchasing public are solicited by respondents to purchase a suit of clothes or overcoat under a so-called "club" plan. Respondents supply each purchaser participating in said plan with a contract of purchase which contract provides for the sale by respondents to such purchaser of a suit of clothes for the sum of \$39, which said amount is to be paid as follows:

\$1 when said contract is delivered and \$1 in advance each week thereafter until the full amount of the contract has been paid. There is space provided on said contract for the recording of the weekly payments. Each of said contracts has printed thereon a number designated as "Ledger No." but in reality a lottery number. Purchasers are informed by respondents that if at any time before their contracts are paid out should said number, or the last three digits thereof, correspond to the last three digits of the Treasury report, as published in a Philadelphia paper, provided all of said purchaser's weekly payments have been made up to date, then and in that event such purchaser would be entitled to and would receive a suit or overcoat without additional payments or cost. Purchasers whose contracts do not bear numbers corresponding with the Treasury report, prior to the payment of the full amount of their contracts, are required to pay the full \$39 for their suits or overcoats. All of said suits and overcoats have a retail selling price of \$39. The amount which the ultimate consumer pays for one of said suits or overcoats is thus determined wholly by lot or chance.

PAR. 4. Respondents have sold and distributed their merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing their merchandise, respondents have conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondents of said sales plans or methods in the sale of such garments by and through the use thereof, and by the aid of said methods, is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 5. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price less than the

1346

Complaint

contracted retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondents, as above alleged, do not use said methods or any methods involving the use of a game of chance, or the sale of a chance to win something by chance or, any other method that is contrary to public policy. Many persons are attracted by respondents' said methods and by the element of chance involved in the sale of said merchandise in the manner above alleged and are thereby induced and persuaded to buy respondents' merchandise in preference to the merchandise offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods.

PAR. 6. The use of said methods by the respondents because of said game of chance has a tendency and capacity to divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondents from their said competitors who do not use the same or equivalent sales plans or methods.

PAR. 7. In the furtherance and promotion of their aforesaid merchandising plan and in order to induce members of the purchasing public, to participate therein, the respondents have made false, misleading, and deceptive statements and representations respecting the merchandise sold by them and the price thereof and the nature of their business, such statements and representations appearing on the contract and receipt card above referred to and described, which card is exhibited to prospective purchasers in soliciting sales of respondents' merchandise. Among such statements and representations, are the following:

One \$39.00 price.

Custom tailors since 1907. and

Our stock consists of hundreds of patterns of fine imported and domestic suitings and overcoatings at \$39.00.

PAR. 8. Through the use of the aforesaid statements and representations respondents represent that all of the suits sold by them are priced at \$39; that respondents have been in the custom tailoring business since 1907, and that respondents carry in stock hundreds of patterns of suitings which are offered and sold at \$39.

Said statements and representations are false, misleading, and deceptive. In truth and in fact, all of respondents' garments are not sold for \$39 but, in many cases, additional payments or an additional sum is required in order to secure a suitable garment from respondents. Respondents have not been in the custom tailoring business since 1907 but only since 1940. Respondents do not carry any large

Findings

34 F. T. C.

or substantial number of patterns from which its customers may select a \$39 suit or overcoat.

PAR. 9. The use by respondents of the foregoing false, misleading, and deceptive statements and representations has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that such representations are true and into the purchase of a substantial volume of respondents' merchandise on account of such belief so induced.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors' 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 26th day of February A. D. 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Shepherd's Tailoring Co., Inc., a corporation, formerly Small's Inc., a corporation, and Louis Small, Walter H. Hahn, and William Trignani, individually, and as officers and directors of Shepherd's Tailoring Co., Inc., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. On March 20, A. D. 1942, respondent William Trignani filed an answer admitting the allegations of the complaint, but denying that Louis Small had ever been an officer of respondent corporation. Thereafter on April 10, 1942, respondent Shepherd's Tailoring Co., Inc., a corporation, and respondents Walter H. Hahn and William Trignani, individually and as officers of the corporation, filed an answer admitting all the material allegations of the complaint and waiving all intervening procedure and further hearing as to said facts, which 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 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, Shepherd's Tailoring Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and until August 8, 1941, its corporate name was Small's, Inc., its name being changed at that time to its present designation. Its principal place of business is located at 1102 Walnut Street, in the city of Philadelphia, State of Pennsylvania. Respondents Walter H. Hahn and William Trignani, are officers and directors of the corporate respondent, Shepherd's Tailoring Co., Inc., and formulate, control and direct the policies, acts, and practices of said corporate respondent. These respondents have acted in concert and in cooperation and conjunction with each other in performing the acts and practices hereinafter set forth.

PAR. 2. Respondents, Shepherd's Tailoring Co., Inc., Walter H. Hahn and William Trignani are now, and for more than 1 year last past have been, engaged in the sale and distribution of men's wearing apparel and other merchandise from their place of business, through the solicitation of orders for such merchandise from persons living in various States of the United States. These respondents fill such orders by transporting merchandise, or causing same to be transported, from their place of business in Philadelphia, Pa., to purchasers thereof at their respective points of location in various States of the United States. These respondents maintain, and at all times herein mentioned have maintained, a course of trade in their garments in commerce between and among the various States of the United States.

In the course and conduct of their business, these respondents are and have been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among various States of the United States.

(NOTE.—When reference is hereinafter made to "respondents," only those named in this paragraph are included.)

PAR. 3. Respondents, in the course and conduct of their business, are now, and have been, selling and distributing garments to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of such sales plans and methods is substantially as follows:

Members of the purchasing public are solicited by respondents to purchase a suit of clothes or overcoat under a so-called "club plan"; respondents furnish each purchaser participating in the plan with a

Findings

34 F. T. C.

contract of purchase, which provides for the sale by respondents to such purchaser, of a suit of clothes for the sum of \$39, which amount is to be paid as follows:

\$1 when contract is delivered, and

\$1 in advance each week thereafter until the full amount of the contract has been paid.

There is a space provided in the contract for recording the weekly payments. Each contract has printed thereon a number designated as "Ledger No.," but in reality this is a lottery number; purchasers are informed by respondents that if at any time before their contracts are paid out, such number, or the last three digits thereof, correspond with the last three digits of the Treasury report as published in a Philadelphia paper, and provided that all of purchaser's weekly payments have been made up to date, in such event the purchaser would be entitled to and would receive a suit of clothes or overcoat without additional payment or cost. Purchasers whose contracts do not bear numbers corresponding to the Treasury report prior to payment of the full amount of their contracts are required to pay respondents the full amount of \$39 for their suits or overcoats. All of these suits and overcoats have a retail selling price of \$39. The amount which the ultimate consumer pays for one of these suits or overcoats is thus wholly determined by lot or chance.

PAR. 4. Respondents have sold and distributed their merchandise to members of the consuming public in accordance with the aforesaid sales plan or method, and in so doing, have conducted games of chance, gift enterprises, or lottery schemes.

PAR. 5. Respondents' sales of merchandise in accordance with the aforesaid sales plan, involve a game of chance or the sale of a chance to procure an article of merchandise at a price less than the contracted price therefor. Many of respondents' competitors mentioned in paragraph 2 hereof do not use the sales plan employed by respondents, or any other method involving a game of chance, gift enterprise or lottery scheme. Many persons are attracted by the element of chance involved in respondents' sales plan, and as a result purchase respondents' merchandise in preference to that of respondents' said competitors, and trade has thereby been unfairly diverted to respondents from their said competitors.

PAR. 6. Respondents, in furtherance and promotion of their sales plan, and in order to induce the purchasing public to participate therein, have made statements and representations respecting the merchandise sold by them, and the price thereof, and the nature of their business, which statements and representations appear on the

1346

Order

contract and receipt card used in connection with their sales plan. Among such statements and representations are the following:

One \$39.00 price;

Custom Tailors since 1907;

Our stock consists of hundreds of patterns of fine imported and domestic suitings and overcoatings for \$39.00.

Said statements and representations are false, misleading and deceptive. In truth and in fact, respondents' garments are not always sold for \$39, but in many instances additional payments, or an additional sum, is required in order to secure a suitable garment. Respondents have not been in the custom tailor business since 1907, but have only been in said business since 1940. Respondents do not carry hundreds of patterns or any large number of patterns from which their customers may select a \$39 suit or overcoat.

PAR. 7. The use by respondents of the false, misleading, and deceptive statements set out in paragraph 6 hereof, has had and now has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and because of such belief, the public has been induced to purchase a substantial amount of respondents' products, and as a result, trade has been unfairly diverted to respondents from their competitors who do not make such false, misleading and deceptive statements concerning their products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice and injury of the public and of respondents' competitors, 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; and the respondents' sales plan violates the public policy of the Government of the United States.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, Shepherd's Tailoring Co., Inc., a corporation, and Walter H. Hahn and William Trignani, individually, and as officers and directors of Shepherd's Tailoring Co., Inc., in which answer said respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts; and the Commission having made its

findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Shepherd's Tailoring Co., Inc., a corporation, its officers, directors, representatives, agents and employees, and respondents, Walter H. Hahn and William Trignani, individually, and as officers and directors of Shepherd's Tailoring Co., Inc., jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of men's suits or other garments in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to, or placing in the hands of, others any merchandise together with a sales plan or method involving the use of a game of chance, gift enterprise or lottery scheme by which said merchandise is to be or may be sold or distributed to the purchasing public.
2. Selling or otherwise disposing of any merchandise by the use of a game of chance, gift enterprise, or lottery scheme.
3. Representing that all the suits sold by them are priced at \$39.
4. Representing that respondents have been in the custom tailoring business since 1907.
5. Representing that respondents carry in stock "hundreds" or any other large number of patterns of suiting which are sold at \$39 or any, other fixed price, unless such is the fact.

It is further ordered, That the respondents, Shepherd's Tailoring Co., Inc., a corporation, and Walter Hahn and William Trignani, 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.

It is further ordered, That the case be closed as to Louis Small, subject to the right of the Commission to reopen the same should further facts so warrant.

Complaint

IN THE MATTER OF

MAURICE L. MYERS, TRADING AS CHARLES B. JOYCE
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4476. Complaint, Mar. 26, 1941—Decision, June 9, 1942*

Where an individual, engaged in competitive interstate sale and distribution of radios, clocks, flashlights, and other novelty merchandise to dealers and other purchasers, including certain assortments thereof which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers, a typical one involving sale of a radio through use of a 1,500-hole punchboard, chances on which were 5 cents each, under a plan by which the customer selecting, by chance, the winning number secured a radio, 8 others received 50 cents in trade, and 20 received 25 cents in trade, the remaining receiving nothing for their money except the right to punch—

Sold such assortments to dealers and other purchasers by whom they were exhibited and sold to the purchasing public in accordance with sales plan above set forth, and thereby supplied to and placed in the hands of others the means of conducting a game of chance or lottery in the sale of his said products;

With the result that many were attracted by said chance sales plan and the opportunity to procure merchandise at much less than its nominal retail price, and were thus induced to buy and sell his products in preference to those of his competitors who do not use any chance sales plan in the sale and distribution of their products, and with effect of unfairly diverting trade to him from them:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, were contrary to the public policy of the United States Government, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. John W. Addison*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Gordon L. Bazelon, 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 *Morris L. Myers*, an individual, trading as *Charles B. Joyce Co.*, 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