

IN THE MATTER OF
THE RICHMAN BROTHERS COMPANY

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

Docket 4844. Complaint, Oct. 2, 1942—Decision, Apr. 6, 1943

Where a corporation, engaged in the manufacture and interstate sale and distribution of men's clothing and other similar products, operating 62 retail stores in 57 cities throughout the United States, doing a mail-order business, and employing some 600 salesmen; by means of newspaper advertisements, catalogs, cards, and folders, and other advertising matter, directly and by implication—

Represented that its clothing had been recommended by all consumers' research bodies testing clothing; that all such research bodies, as a result of such tests, had rated its clothing as being of the best grade; and that the leading consumers' research bodies of the United States had investigated the outstanding brands of clothing and in every instance rated its clothes first in the low-priced field;

When in fact only three of the numerous consumers' research bodies in the United States had actually made tests of, and rated, its clothing;

With effect of misleading and deceiving a substantial portion of the purchasing public in aforesaid respects, and of thereby causing it to purchase substantial quantities of said products:

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. B. G. Wilson for the Commission.

Jones, Day, Cockley & Reavis, of Cleveland, Ohio, 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 The Richman Bros. 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, The Richman Bros. Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio with its office and principal place of business located at 1600 East Fifty-fifth Street, Cleveland, Ohio.

The respondent is now, and for more than 2 years last past has been, engaged in the manufacture of men's clothing and other similar products, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent operates approximately 62 retail stores in 57 cities throughout the United States, does a mail-order business and employs some 600 salesmen.

Respondent causes its said products when sold to be shipped from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in its said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business and for the purpose of inducing the purchase of its said clothing, the respondent has disseminated false and misleading statements and representations with respect to said clothing. Such false and misleading statements and representations have been inserted in newspapers having a general circulation, catalogs, cards and folders, and other advertising matter distributed to members of the purchasing public situated in various States of the United States. Among and typical of such false and misleading statements and representations are the following:

Recommended by all consumers' research bodies.

Research bodies rate Richman's clothes "tops".

During the last three years the leading consumers' research bodies of the United States have investigated the outstanding brands of clothing and in every instance rated Richman Brothers' clothes first in the low priced field.

PAR. 3. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly and by implication, that its clothing has been recommended by all consumers' research bodies testing clothing; that all such research bodies as a result of such tests have rated respondent's clothing to be of the best grade; and that the leading consumers' research bodies of the United States have investigated the outstanding brands of such clothing and in every instance rated respondent's clothes first in the low-priced field.

PAR. 4. The foregoing statements and representations used and disseminated by the respondent in the manner aforesaid are false, misleading, and deceptive. In truth and in fact, said clothing offered for sale and sold by respondent has not been recommended by

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all consumers' research bodies testing clothing, nor have all consumers' research bodies testing clothing rated respondent's clothing as being of the best grade or as being "tops" as the term is understood by the purchasing public. All the leading consumers' research bodies of the United States have not investigated the brands of respondent's clothing or made tests or rated said clothing first in the low-priced field. In truth and in fact, only three consumers' research bodies have actually made tests and rated respondent's clothing. However, there are numerous other leading organizations in the United States which are engaged in consumers' research work and which are properly qualified as such and which have not tested or recommended respondent's products.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for men's clothing which has been tested and rated first in the low-priced field by leading consumers' research bodies over men's clothing which has not been so tested and rated by such organizations.

PAR. 6. The aforesaid acts and practices of the respondent have had, and now have, the capacity and tendency to and do mislead and deceive a substantial portion of purchasers and prospective purchasers into the erroneous and mistaken belief that respondent's clothing has in fact been recommended by all leading consumers' research bodies and caused members of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said clothing.

PAR. 7. 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 October 2, 1942, issued and subsequently served its complaint in this proceeding upon respondent, The Richman Bros. Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the issuance of the complaint and the filing of respondent's answer thereto, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation as to the facts was read into the record in lieu of testimony in support of the charges stated in the complaint and in opposition thereto. The stipulation provided that the Com-

mission might proceed upon such statement of facts to make its findings as to the facts and its conclusion based thereon, and issue its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding came on for final hearing before the Commission on the complaint, answer, and stipulation as to the facts; 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, The Richman Bros. Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 1600 East Fifty-fifth Street, Cleveland, Ohio.

The respondent, is now, and for more than 2 years, last past, has been engaged in the manufacture of men's clothing and other similar products, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Respondent operates approximately 62 retail stores in 57 cities throughout the United States, does a mail-order business, and has employed some six hundred salesmen.

Respondent causes its said products, when sold, to be shipped from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in its said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business and for the purpose of inducing the purchase of its said clothing, the respondent has disseminated misleading statements and representations with respect to said clothing. Such misleading statements and representations have been inserted in newspapers having a general circulation, catalogs, cards and folders, and other advertising matter distributed to members of the purchasing public situated in various States of the United States. Among and typical of such misleading statements and representations are the following:

Recommended by all consumers' research bodies.
Research bodies rate Richman's clothes "tops."

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During the last three years the leading consumers' research bodies of the United States have investigated the outstanding brands of clothing and in every instance rated Richman Brothers' clothes first in the low priced field.

PAR. 3. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, the respondent represents and has represented, directly and by implication, that its clothing has been recommended by all consumers' research bodies testing clothing; that all such research bodies as a result of such tests have rated respondent's clothing to be of the best grade; and that the leading consumers' research bodies of the United States have investigated the outstanding brands of clothing and in every instance rated respondent's clothes first in the low-priced field.

PAR. 4. The foregoing statements and representations used and disseminated by the respondent in the manner aforesaid are misleading and deceptive. In truth and in fact said clothing offered for sale and sold by respondent has not been recommended by all consumers' research bodies testing clothing, nor have all consumers' research bodies testing clothing rated respondent's clothing as being of the best grade or as being "tops," as the term is understood by the purchasing public. All the leading consumers' research bodies of the United States have not investigated respondent's clothing, or made tests of or rated said clothing first in the low-priced field. In truth and in fact, only three consumers' research bodies have actually made tests of and rated respondent's clothing. There are numerous other leading organizations in the United States which are engaged in consumers' research work and which are properly qualified as such, and which have not tested or recommended respondent's products.

PAR. 5. There is a marked preference on the part of a substantial portion of the purchasing public for men's clothing which has been tested and rated first in the low-priced field by leading consumers' research bodies, over men's clothing which has not been so tested and rated by such organizations.

PAR. 6. The aforesaid acts and practices of the respondent have had and now have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's said clothing has been recommended by all consumer research bodies engaged in testing clothing, that all such research bodies have rated respondent's clothing to be of the best grade, and that the leading consumer research bodies in the United States have investigated the outstanding brands and have found respondent's clothing first in the low-priced field. Said erroneous and mistaken belief has caused such portion of the public to purchase substantial quantities of respondent's said clothing.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, respondent's answer, and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record, 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, The Richman Bros. Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of men's clothing in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that respondent's clothing has been tested or recommended by all consumers' research bodies in the United States which test clothing.

2. Representing, directly or indirectly, that all consumers' research bodies in the United States which test clothing have rated respondent's clothing to be of the best grade.

3. Representing, directly or indirectly, that the leading consumers' research bodies in the United States have tested the outstanding brands of men's clothing and have found respondent's clothing to be first in the low-priced field.

It is further ordered, That 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.

IN THE MATTER OF
GARMENT BOX MANUFACTURERS ASSOCIATION, 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 4777. Complaint, June 26, 1942—Decision, Apr. 10, 1943

Where 13 corporations and 11 other concerns, members of an unincorporated trade association, engaged in the manufacture or assembly, sale, and distribution of garment boxes to garment wholesalers and retailers; constituting for many purchasers of such articles their only regular source of supply, and in competition with one another prior to, and but for the matters below set forth;

Acting in concert with one another and with and through their said association and seven individuals who were president and directors thereof; with intent of eliminating price competition among themselves—

- (a) Entered into and carried out an agreement to fix and maintain uniform prices for garment boxes, and at meetings of their association discussed and agreed upon such prices;
- (b) Adopted and carried out a plan of collecting information with respect, among other things, to the quantities of products sold by members and selling prices thereof, including the names of customers and quantities to be sold to each, and consisting, in part, of duplicate invoices and analyses of daily sales of members, and divulged such information to all the members of their association at open meetings or supplied the same upon request;
- (c) Employed accountants to examine and audit members' books to determine whether aforesaid reports of prices, quantities, and names of customers were true, and to detect violations of agreements;
- (d) Adopted and carried out through their prior "Garment Box Venture" and later "Garment Box Credit Bureau" committee, a plan of allocating to each member a percentage of the industry's total sales which, as agreed, was not to be exceeded, and violation of which subjected member to penalty of paying to the association 3 cents for each box sold in excess thereof, while member selling below his quota was reimbursed at the same rate for number of boxes sold below such quota;
- (e) Required each member to deposit a substantial sum of money with the association as a guarantee that he would abide by rules and regulations thereof, and pay dues at the rate of 1 cent for each box sold by him;
- (f) Collected from members and disbursed under said plan dues, assessments, and penalties through aforesaid committees, operated by its president and another director as trustees, under its manager's guidance;
- (g) Agreed not to, and refused, to sell garment boxes to any purchaser who bought from any assembler or dealer not a member of the association;
- (h) Allocated to certain members sales of boxes to certain purchasers, with the understanding that none of the others should sell to those whose purchases were so allotted; and
- (i) Purchased the business of some of their competitors who had sold garment boxes at less than the prices fixed, and induced and coerced others selling at less than such prices, to discontinue the business of selling such boxes;