

Complaint

IN THE MATTER OF

BEN KOTTENBROOK, TRADING AS CONWAY TAILORS

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

Docket 4910. Complaint, Feb. 12, 1943—Decision, May 26, 1943

Where an individual engaged in the manufacture and interstate sale and distribution of men's wearing apparel in response to orders solicited therefor from persons in various states—

Sold his said garments under a so-called "club" plan in accordance with which participating purchasers undertook to pay \$1 down and \$1 a week, and each week a suit of clothes was awarded to one of the purchasers by chance on the basis of the weekly clearing house figures published in the local paper, without payment of further installments, and thereby conducted lotteries in accordance with aforesaid sales plan involving sale of a chance to procure an article at less than the contract retail price, contrary to an established public policy of the United States Government, and in competition with many who do not use any method contrary to public policy;

With the result that many were attracted by his said sales method and by the element of chance involved therein, and were thereby induced to buy his merchandise in preference to that of his aforesaid competitors;

With tendency and capacity to divert trade in commerce from his said competitors to him:

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

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

COMPLAINT¹

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 Ben Kottonbrook, an individual, trading as Conway Tailors, 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

¹ The complaint was amended by an order of the Commission dated May 1, 1943, as follows:

The Commission issued its complaint on February 12, 1943, naming Ben Cottonbrook, an individual, trading as Conway Tailors, as party respondent, and it appearing to the Commission that the correct spelling of the name of the respondent is "Kottenbrook" and not "Cottonbrook."

It is hereby ordered, That the complaint hitherto issued in the matter be, and the same hereby is, amended to change the spelling of the name of the respondent from "Cottonbrook" to "Kottenbrook."

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be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ben Kottonbrook, is an individual trading and doing business as Conway Tailors, with his principal place of business located at 434 Elm Street, Cincinnati, Ohio. Respondent, is now, and for more than one year last past, has been engaged in the manufacture and sale and distribution of men's wearing apparel from his said place of business through the solicitation of orders for such merchandise from persons living in various States of the United States. Respondent filled such orders by transporting said merchandise or causing same to be transported from his said place of business in Cincinnati, Ohio, to purchasers thereof at their respective points of location in various States of the United States. Respondent maintains and at all times mentioned herein has maintained a course of trade in his said garments in commerce between and among the various States of the United States.

In the course and conduct of his business respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent is now and has 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 plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent or respondent's agent to purchase a suit of clothes or overcoat under a so-called "club" plan. Respondent supplies such purchaser participating in said plan with a contract of purchase, which contract provides for the sale by respondent to such purchaser of a suit of clothes for the sum of \$35 which said amount is to be paid as follows: \$1 when contract is delivered and \$1 or more per week thereafter. There is space provided on the said contract for the recording of the weekly payments. Purchasers are informed by respondent or respondent's agent that each week a suit of clothes will be awarded to the holder of one of the contracts, by chance, based upon the weekly clearing house figures as published in the Cincinnati Inquirer without payment of further instalments. Purchasers who do not win a suit by said chance prior to the payment of the full amount of their contract are required to pay a full \$35 for their suits or overcoats.

Whether a purchaser of one of the respondent's suits or overcoats pays less than \$35 or \$35 is thus determined wholly by lot or chance.

PAR. 3. Respondent has sold and distributed his merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing his merchandise, respondent has conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondent 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. 4. 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 contracted retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise, in competition with respondent, 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 respondent's 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 respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods.

PAR. 5. The use of said methods by the respondent 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 to respondent from his said competitors who do not use the same or equivalent sales plans or methods.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair 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 February 12, 1943, issued and on February 13, 1943, served its complaint in this proceeding upon respondent, Ben Kottenbrook (referred to in the complaint as Ben Cottonbrock), an individual, trading as Conway Tailors, charging him

Findings

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with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of that act. On April 21, 1943, the respondent filed his answer, in which answer he admitted all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and the answer 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, Ben Kottenbrook, is an individual, trading and doing business as Conway Tailors, with his principal place of business located at 434 Elm Street, Cincinnati, Ohio. Respondent, is now, and for more than one year last past, has been engaged in the manufacture and sale and distribution of men's wearing apparel from his said place of business through the solicitation of orders for such merchandise from persons living in various States of the United States. Respondent fills such orders by transporting said merchandise, or causing the same to be transported, from his said place of business in Cincinnati, Ohio, to purchasers thereof at their respective points of location in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said garments in commerce between and among the various States of the United States.

In the course and conduct of his business, respondent is and has been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent is now and has 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 plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent or respondent's agents to purchase a suit of clothes or overcoat under a so-called "club" plan. Respondent supplies each purchaser participating in said plan with a contract of purchase, which contract provides for the sale by respondent to such purchaser of a suit of clothes

for the sum of \$35, which said amount is to be paid as follows: \$1 when contract is delivered, and \$1 or more per week thereafter. There is space provided on the said contract for the recording of the weekly payments. Purchasers are informed by respondent or respondent's agents that each week a suit of clothes will be awarded to the holder of one of the contracts, by chance, based upon the weekly clearing house figures as published in the Cincinnati Inquirer, without payment of further instalments. Purchasers who do not win a suit by said chance prior to the payment of the full amount of their contract are required to pay a full \$35 for their suits or overcoats. Whether a purchaser of one of respondent's suits or overcoats pays less than \$35 or \$37 is thus determined wholly by lot or chance.

PAR. 3. Respondent has sold and distributed his merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing his merchandise, respondent has conducted lotteries in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said sales plans or methods in the sale of such garments is a practice of a sort which is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an article of merchandise at a price less than the contracted retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with respondent, as above set forth, 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 respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above described, and are thereby induced and persuaded to buy respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods.

PAR. 5. The use of said methods by the respondent, 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 to respondent from his said competitors who do not use the same or equivalent sales plans or methods.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's

competitors, and constitute unfair methods of competition in commerce and unfair 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 answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives 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 respondent has violated the provisions of the Federal Trade Commission Act

It is ordered, That the respondent, Ben Kottenbrook, individually and trading as Conway Tailors, or trading under any other name, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of men's wearing apparel or any other merchandise 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 agents or others, any sales plan or method involving the operation of a game of chance, gift enterprise, or lottery scheme.
2. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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.

Syllabus

IN THE MATTER OF
NATIONAL ASSOCIATION OF SANITARY MILK BOTTLE
CLOSURE MANUFACTURERS 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 4565. Complaint, Aug. 12, 1941—Decision, June 1, 1943

Where a number of corporations, manufacturing approximately all the closure milk bottle caps produced in the United States, members of an association which was the Code Authority for the industry under the N. R. A., selling practically all of their said product as special printed caps, on an annual requirement basis, to jobbers and dairies and in competition with one another and others except as such competition had been restrained as below set forth—

(a) Entered into agreements and combinations to file with their said association price lists for closure milk bottle caps, and to abide by such filed prices until new and different prices were filed, and to fix and maintain certain uniform discounts, uniform contract terms and trade practices and other uniform conditions for the sale and distribution in commerce of said products; and

Where said association, pursuant to said agreements and combinations—

(b) Rated and classified over 7,800 dairies, located throughout the United States, according to the number of closure caps used annually, through its "Annual Requirement Record" which it compiled and published;

(c) Limited the quantity of such caps which jobbers or dairy customers might contract for or purchase from aforesaid manufacturers, and prevented sale of such caps to cooperative buying agencies, and confined it exclusively to jobbers and dairy consumers; and

Where said manufacturers—

(d) Agreed to and did adhere to said ratings in determining contract prices at which dairies should be sold, and fixed and maintained quantity prices or price differentials based on the quantities purchased from all sources as fixed or determined by such rating books;

(e) To make more effective the operation and carrying out of aforesaid agreements and combinations, filed with the aforesaid association in addition to price lists, copies of invoices containing names of purchasers, quantities purchased and prices paid therefor, and copies of contracts and conditions of sale; and

Where said association—

(f) Checked said filed data to determine whether said manufacturers carried out aforesaid agreements, and invited member manufacturers to complain if another member was not abiding by its policies, in accordance with its policy and practice of policing the industry; and

(g) Held or sponsored meetings of said manufacturers for the discussion and interchange of information relative to prices, discounts, and conditions or terms to be fixed for the sale of said caps;

With the result that competition among them in the sale of closure milk bottle caps in commerce was restrained and prevented: