

IN THE MATTER OF

WALTER ZULAWINSKI AND LOUISE ZULAWINSKI, TRADING AS ITALIAN ACCORDION MANUFACTURING COMPANY AND ITALIA & P. SOPRANI ACCORDION MANUFACTURING COMPANY

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

Docket 5330. Complaint, June 6, 1945—Decision, Feb. 28, 1946

Where two individuals engaged in the interstate sale and distribution of musical instruments, including new, reconditioned, and used accordions and concertinas; through advertisements in trade journals and magazines, circulars, letterheads, catalogs, and other advertising media, directly or by implication—

Represented that they had been accordion manufacturers since 1861; that their products were manufactured by Italia & P. Soprani Accordion Manufacturing Company; and that they were the manufacturers of the products they offered for sale and sold; had on hand all types and models of accordions; and gave prompt and satisfactory service on all orders for said instruments; The facts being that they had been engaged in the sale and distribution of accordions only since 1941; there was no such manufacturer of accordions as the aforesaid company; they did not own, operate, or control any plant or factory for the manufacture of their products, but were engaged in the sale and distribution of accordions and other musical instruments acquired from others; did not have on hand all types and models of accordions, and were not in position to give prompt attention, service or delivery on orders received by them; and in filling orders, they attempted to substitute items other than those requested, at a price different from that indicated in their advertising matter;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, which has a marked preference for dealing directly with the manufacturer, in the erroneous belief that such representations were true, and thereby to induce it to purchase their 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. Jesse D. Kash for the Commission.

Law, Tate & Walsh, of Chicago, Ill., 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 Walter Zulawinski

and Louise Zulawinski, individuals, trading as Italian Accordion Manufacturing Co., and Italia & P. Soprani Accordion Manufacturing Co., hereinafter referred to as respondents, have 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. The respondents, Walter Zulawinski and Louis Zulawinski are individuals trading as Italian Accordion Manufacturing Co., and Italia & P. Soprani Accordion Manufacturing Co., with their office and principal place of business at 323 West Polk St., Chicago, Ill.

PAR. 2. The respondents for more than 2 years last past have been engaged in the sale and distribution of musical instruments, including new, reconditioned, and used accordions and concertinas. Respondents cause said products, when sold by them, to be transported from their aforesaid place of business in the State of Ohio to purchasers located in various other States of the United States and in the District of Columbia.

The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their products, the respondents have circulated among prospective purchasers throughout the United States by United States mails, advertisements in trade journals and magazines, circulars, letterheads, catalogs, and other advertising media, all of general circulation, many false statements and representations concerning the nature of their business and the origin of their products. Among and typical of such false, misleading, and deceptive statements so made and disseminated, as aforesaid, are the following:

Italian accordions. Hand made. Very best. Lowest prices. Direct from factory representative. Send your name and address for free catalog. Italia & P. Soprani Acc. Mfg. Co.

Accordion manufacturers since 1861.

World's best hand made accordions.

Buy direct from factory.

Receive prompt service and satisfaction.

Large stock of assorted accordions.

Italian Accordion Manufacturing Company.

PAR. 4. Through the use of the foregoing statements and representations hereinabove set forth, and others similar thereto not specifically

Complaint

42 F. T. C.

set out herein, the respondents have represented, directly or by implication, that they have been accordion manufacturers since 1861; that their products were manufactured by Italia & P. Soprani Accordion Manufacturing Co.; that they are the manufacturers of the products offered for sale and sold by them in said commerce; that they have on hand all types and models of accordions; that they give prompt and satisfactory service on all order for said instruments.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact the respondents have not been engaged in the business of manufacturing accordions since 1861, they have only been engaged in the sale and distribution of accordions since 1942. Their products are not manufactured by Italia & P. Soprani Accordion Manufacturing Co. In truth and in fact there is no such a manufacturer of accordions and said name is wholly fictitious. The respondents do not own, operate nor control any plant or factory for the manufacture of their products, but they are engaged in the sale and distribution of accordions and other musical instruments which are acquired from others. The respondents do not have on hand all types and models of accordions and are not in position to give prompt attention, service, or delivery on orders received by them. In filling orders the respondents did not and were not able to make prompt and satisfactory delivery but would attempt to fill orders by substitution with items other than those that the customer had requested, at a price different from that indicated in their advertising matter.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public, for dealing directly with and buying from the manufacturer.

PAR. 7. The use by the respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said products in commerce between and among the several States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondents herein alleged are all to the injury and prejudice 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 June 6, 1945, issued and subsequently served its complaint in this proceeding on the respondents, Walter Zulawinski and Louise Zulawinski, trading as Italian Accordion Manufacturing Co. and Italia & P. Soprani Accordion Manufacturing Co., charging them with the use of 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 the answer of the respondents 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 entered into by and between the attorney for the Commission and the respondents through their attorney, William H. Tate, Esq., 221 North LaSalle Street, Chicago, Ill., and read into the record. This stipulation provides that the facts therein set forth shall be taken as the facts in this proceeding and in lieu of testimony in support of the allegations of the complaint or in opposition thereto and that the Commission may proceed upon said complaint and said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. The respondents expressly waived the filing by the trial examiner of a report upon the evidence.

Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and stipulation as to the facts (such stipulation having been accepted and approved by the Commission) 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. The respondents, Walter Zulawinski and Louise Zulawinski are individuals trading as Italian Accordion Manufacturing Co. and Italia & P. Soprani Accordion Manufacturing Co., with their office and principal place of business at 323 West Polk Street, Chicago, Ill.

PAR. 2. The respondents for more than 2 years last past have been engaged in the sale and distribution of musical instruments, in-

Findings

42 F. T. C.

cluding new, reconditioned and used accordions and concertinas. Respondents cause said products, when sold by them, to be transported from their aforesaid place of business in the State of Illinois to purchasers located in various other States of the United States and in the District of Columbia.

The respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their products, the respondents have circulated among prospective purchasers throughout the United States by United States mails, advertisements in trade journals and magazines, circulars, letterheads, catalogs, and other advertising media, all of general circulation, many false statements and representations concerning the nature of their business and the origin of their products. Among and typical of such false, misleading, and deceptive statements so made and disseminated, as aforesaid, are the following:

Italian accordions. Hand made. Very best. Lowest prices. Direct from factory representative. Send your name and address for free catalog. Italia & P. Soprani Acc. Mfg. Co.

Accordion manufacturers since 1861.

World's best hand made accordions.

Buy direct from factory.

Receive prompt service and satisfaction.

Large stock of assorted accordions.

Italian Accordion Manufacturing Company.

PAR. 4. Through the use of the foregoing statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondents have represented, directly or by implication, that they have been accordion manufacturers since 1861; that their products were manufactured by Italia & P. Soprani Accordion Manufacturing Co.; that they are the manufacturers of the products offered for sale and sold by them in said commerce; that they have on hand all types and models of accordions; and that they give prompt and satisfactory service on all orders for said instruments.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact the respondents have not been engaged in the business of manufacturing accordions since 1861; they have only been engaged in the sale and distribution of accordions since 1941. Their products are not manufactured by Italia & P.

Soprani Accordion Manufacturing Co. In truth and in fact there is no such manufacturer of accordions and said name is wholly fictitious. The respondents do not own, operate, or control any plant or factory for the manufacture of their products, but they are engaged in the sale and distribution of accordions and other musical instruments which are acquired from others. The respondents do not have on hand all types and models of accordions and are not in position to give prompt attention, service, or delivery on orders received by them. In filling orders, the respondents did not and were not able to make prompt and satisfactory delivery at all times but would attempt to fill orders by substitution with items other than those that the customer had requested, at a price different from that indicated in their advertising matter.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for dealing directly with and buying from the manufacturer of accordions and musical instruments.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said products in commerce between and among the several States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents 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 and a stipulation as to the facts entered into by and between counsel for the Commission and the respondents upon the record; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Walter Zulawinski and Louise Zulawinski, individually and trading as Italian Accordion Manufacturing Company and Italia & P. Soprani Accordion Manufacturing

Order

42 F. T. C.

Co., or under any other name, and their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of musical instruments, including new, reconditioned, and used accordions and concertinas, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' business was established in 1861 or at any time other than the date of its actual establishment.

2. Using the word "Manufacturing" or any other word of similar import or meaning in respondents' trade name or representing in any other manner that respondents own, operate, or control a factory wherein their musical instruments are made.

3. Using the statement "Buy direct from factory" or any other statement of similar import or meaning in connection with the sale of musical instruments not manufactured by the respondents.

4. Representing, directly or by implication, that respondents are offering for sale all types or models of accordions or any particular musical instrument or any type or model of such instrument when respondents cannot, and do not, deliver musical instruments of the kind and quality so offered for sale.

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.

Complaint

IN THE MATTER OF

STEVENS CLOTHING MANUFACTURING COMPANY, INC.

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

Docket 5240. Complaint, Oct. 20, 1944—Decision, Mar. 20, 1946

Where a corporation engaged in the interstate sale and distribution of men's clothing under a corporate name which included the words "Clothing Manufacturing Company"—

- (a) Represented falsely that it was the manufacturer of said clothing by its corporate name, by signs on the building in which its business was located, by its stationery, by the labels attached to its merchandise, by large pictures in the showroom of its place of business purporting to show various work-rooms in its factory, and by representations in radio advertising, through such typical statements as "Stevens skilled tailors in their own factories," "Their factory controls the manufacturing costs," "The Stevens Clothing Manufacturing Company sell from their own factory direct to you," etc.; and
- (b) Falsely represented in its radio broadcasts that it had been given a manufacturer's registered identification number by an agency of the United States Government and stated that, that was proof that it was a clothing manufacturer; and
- (c) Falsely represented, through its road sign and radio advertising, that it sold at \$10 less than regular retail prices, through such statements as "Stevens * * * eliminate the middle man's profit * * * enjoy the savings of \$10.00 on every suit that you buy at Steven's.";

The facts being that the prices at which said clothing was sold were not whole-sale prices, its place of business was a retail store, and the photographs displayed in its said store were scenes made in various plants operated by others;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to its business status and its products, and thereby to cause the purchase of 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. Arthur F. Thomas*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. G. M. Martin* for the Commission.

Mr. Joseph Greenberg, of Albany, 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 Stevens Clothing Manufacturing Co., Inc., a corporation, hereinafter referred to as