

Syllabus

IN THE MATTER OF

SIMON ACKERMAN MANUFACTURERS & TAILORS, INC.,
SIMON ACKERMAN, MAY ACKERMAN, MYRON ACKER-
MAN, AND RAYMOND ACKERMAN

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

Docket 5109. Complaint, Dec. 31, 1943—Decision, May 15, 1946

The purchasing public believes that merchants retiring from or going out of business make price concessions in the sale of their merchandise which are not obtainable from merchants in the usual and customary course of business, and, as a result of such belief, purchases merchandise sold by merchants representing that they are going out of business in preference to merchandise offered by those who do not make such representations.

Where a corporation and four officers and directors thereof, who managed and controlled its affairs, engaged in the interstate sale and distribution of men's suits, top coats, overcoats, and other clothing to and through retail dealers and also through their own retail stores in various States—

Falsely represented, directly or indirectly, that they were going out of business and that for this reason their merchandise was being offered at specially reduced prices, and that they were custom tailors, through such statements in radio broadcasts and in advertisements in newspapers, magazines, and trade journals and on placards and other advertising material as, "Here is the clothing news of the decade. The Simon Ackerman Company, makers of men's fine clothing, is going out of business," "After 45 years Simon Ackerman retires from business. Entire stock must be disposed of immediately," "Manufacturers, tailors discontinuing retail business, closing its retail stores." "We have decided to * * * quickly liquidate this business finally and forever";

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby to cause it to purchase substantial quantities of their merchandise; whereby substantial trade was diverted unfairly to them from their competitors:

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

Before *Mr. Webster Ballinger*, trial examiner.

Mr. R. A. McOuat and *Mr. D. C. Daniel* for the Commission.

Stroock & Stroock & Lavan, of New York City, and *Watters, Cowan & Baldrige*, of Washington, D. C., for respondents.

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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 Simon Ackerman Clothes, Inc., a corporation; Simon Ackerman Manufacturers & Tailors, Inc., a corporation; Simon Ackerman; May Ackerman; Myron Ackerman; and Raymond Ackerman, individually and as officers and directors of said corporations and trading as Chester Barrie, 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. Respondent Simon Ackerman Clothes, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, in 1924, with its principal office and place of business located 53 West Twenty-third Street, New York City, N. Y.; respondent Simon Ackerman Manufacturers & Tailors, Inc., is a corporation organized and existing under the laws of the State of New York, in 1941, with its office and principal place of business located at 53 West Twenty-third Street, New York City, N. Y.; respondent Simon Ackerman is an individual and is president and director of the respective respondent corporations; respondent May Ackerman is an individual and is vice president and director of the respective respondent corporations; respondent Raymond Ackerman is an individual and is secretary and a director of respondent corporation Simon Ackerman Manufacturers & Tailors, Inc.; Myron Ackerman is an individual and is secretary and a director of respondent corporation Simon Ackerman Clothes, Inc.

Said respondent individuals, individually and as officers, agents, and representatives of respondent corporations, and during all the times herein stated, managed, controlled, and dominated the affairs and business activities of said corporations with respect to the acts and practices hereinafter set forth. Said individuals and officers have their offices and place of business at 53 West Twenty-third Street, New York City.

PAR. 2. Respondents are now and for more than 5 years last past have been engaged in the sale and distribution of men's suits and clothing. Respondents now cause and have caused said products, when sold, to be transported from their place of business in the State of New York to stores operated by them and to other dealers in various States of the United States and to purchasers thereof at their respective

points of location in various States of the United States other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products 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 business in connection with the offering for sale, sale, and distribution of their products in commerce and for the purpose of inducing the purchase thereof by the **public, respondents**, during all the time from 1934 to date, have caused and have placed in the hands of others the means whereby various false, misleading, and deceptive statements and representations descriptive of their merchandise and the prices thereof and of their business and business status to be broadcast through radio continuities and printed in newspapers, sales magazines, price lists, trade journals, advertising placards and on letterheads, and otherwise, which they distributed among department and retail stores and to prospective customers located in various States of the United States and in the District of Columbia. Among and typical of such false and misleading statements and representations so made and circulated are the following:

We are going out of business * * * Simon Ackerman Clothes, Inc. (1934).

Here is the clothing news of the decade. The Simon Ackerman Company, makers of men's fine clothing, is going out of business.

Suits, topcoats, and overcoats.

After 45 years Simon Ackerman retires from business. Entire stock must be disposed of immediately.

Manufacturers, tailors discontinuing retail business, closing its retail stores.

Suits, topcoats, overcoats * * * at approximately 50% reductions from original prices * * * reductions of our needlecraft custom shops.

We have decided to * * * quickly liquidate this business finally and forever.

We are able to place on sale several thousand garments consisting of suits, overcoats, and topcoats * * * we cannot impress upon the men * * * too much that this is a once in a lifetime opportunity that is to be taken advantage of NOW as it will never come again.

* * * you can buy Simon Ackerman Clothes for just about half their former retail prices * * * prices are virtually wholesale.

PAR. 4. Through the use of the aforesaid statements and representations and other statements and representations similar thereto, not set out herein, made by respondents and others at respondents' instance or suggestion, all of which purport to be descriptive of respondents' business and status and the prices of respondents' said merchandise, respondents represent directly and indirectly that they are manufacturers and tailors and that they are manufacturers or tailors and make the coats, suits, and wearing apparel sold by them;

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that they are going out of business and that their merchandise is being sold at wholesale prices or half price.

PAR. 5. In truth and in fact, the foregoing statements and representations made by respondents are false, deceptive, and misleading. The prices at which respondents offer to sell, and sell said merchandise, are not wholesale prices and said prices are not reduced 50 percent; respondents have not retired or discontinued business; respondents are not manufacturers or tailors and do not manufacture or make the coats, suits, and apparel which they sell, and do not own or control a factory or plant in which said garments are made.

PAR. 6. The purchasing public believe that merchants retiring from or going out of business sell their merchandise on hand at wholesale prices or reduced or half price, and buy merchandise at such sales, in preference to merchandise sold by retail dealers in the usual and customary course of business, in the belief that the merchandise is sold for less than the usual or regular retail price.

PAR. 7. The use by the respondents of the aforesaid acts and practices 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 all of said representations are true and that respondents were wholesale dealers or tailors; that respondents were going out of business and were selling their said merchandise at wholesale prices or half price and on account of this erroneous and mistaken belief, so induced by respondents' said false and misleading statements and representations, have purchased a substantial volume of respondents' merchandise.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the injury and prejudice 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 December 31, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Simon Ackerman, Manufacturers & Tailors, Inc., a corporation, and Simon Ackerman, May Ackerman, Myron Ackerman, and Raymond Ackerman, individually and as officers and directors of said corporation 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 that act. After the filing by the respondents of their answer to the complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel for the respondents and Richard P. Whiteley, assistant chief counsel for the Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in oppositions thereto, and that the Commission might proceed upon such statement of facts and the answer of the respondents to make its report stating its findings as to the facts (including inferences which it might draw from the 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. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, and stipulation, the stipulation having been approved, accepted, and filed; 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 Simon Ackerman Manufacturers & Tailors, Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business located at 200 Fifth Avenue, New York, N. Y. The original name of the corporation was Simon Ackerman Clothes, Inc., but in September 1941 the corporation, by an amendment of its charter, changed its name to Simon Ackerman Manufacturers & Tailors, Inc.

Respondent Simon Ackerman, an individual, is president and a director of the corporation. Respondent May Ackerman, an individual, is vice president and a director of the corporation. Respondent Raymond Ackerman, an individual, is secretary and a director of the corporation. Respondent Myron Ackerman, an individual, has in the past also acted as secretary of the corporation. The individual respondents have managed, controlled, and dominated the affairs and business activities of the corporate respondent in respect of the acts and practices hereinafter set forth.

Reference was made in the complaint herein to another corporate respondent—Simon Ackerman Clothes, Inc. This respondent, however, is in fact the same corporation as Simon Ackerman Manufac-

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turers & Tailors, Inc., there being but one corporate respondent in the proceeding. While an entirely new corporation known as Simon Ackerman Clothes, Inc., was organized in 1941, this new corporation is not involved in the present proceeding.

PAR. 2. The respondents are now, and for many years last past have been, engaged in the sale and distribution of men's suits, topcoats, overcoats, and other clothing. They cause and have caused their merchandise, when sold, to be transported from their place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a substantial course of trade in their merchandise in commerce among and between the various States of the United States and in the District of Columbia. Respondents sell to retail dealers, and they also maintain retail stores in various States of the United States through which their merchandise is sold directly to the purchasing public.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the purchase of their merchandise, respondents have made, and have caused to be made, various representations concerning their business status and their merchandise. These representations were broadcast in radio continuities and were also printed in newspapers, magazines, and trade journals of general circulation and on placards and other advertising material distributed among prospective purchasers located in various States of the United States and in the District of Columbia. Among and typical of such representations are the following:

We are going out of business * * * Simon Ackerman Clothes, Inc.

Here is the clothing news of the decade. The Simon Ackerman Company, makers of men's fine clothing, is going out of business.

After 45 years Simon Ackerman retires from business. Entire stock must be disposed of immediately.

Manufacturers, tailors discontinuing retail business, closing its retail stores.

We have decided to * * * quickly liquidate this business finally and forever.

We are able to place on sale several thousand garments consisting of suits, overcoats and topcoats * * * we cannot impress upon the men * * * too much that this is a once in a lifetime opportunity that is to be taken advantage of NOW as it will never come again.

PAR. 4. Through the use of these representations and others similar thereto, respondents represented, directly or indirectly, that they were going out of business and that for this reason their merchandise was being offered at specially reduced prices, and that they were custom tailors.

PAR. 5. These representations were false, misleading, and deceptive. Respondents were not in fact going out of business. Some of the prices in question did not represent reduced prices but were the regular and customary prices charged by respondents for their merchandise. Respondents are not custom tailors at the present time nor were they custom tailors at the time the above representation was made.

PAR. 6. The purchasing public believes that merchants retiring from or going out of business make price concessions in the sale of their merchandise which are not obtainable from merchants in the usual and customary course of business. As a result of such belief, the public purchases merchandise sold by merchants representing that they are going out of business in preference to merchandise offered by those who do not make such representation.

PAR. 7. The use by the respondents of these false, misleading, and deceptive representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' business status and the prices and values of respondents' merchandise, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such merchandise as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted unfairly to respondents from their competitors.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and a stipulation as to the facts entered into between counsel for respondents and Richard P. Whiteley, assistant chief counsel for the Commission, which provided, among other things, that without further evidence or other intervening procedure the Commission might issue and serve upon the respondents findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission having made its findings as to the

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facts and conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Simon Ackerman Manufacturers & Tailors, Inc., a corporation (formerly doing business under the name Simon Ackerman Clothes, Inc.) and its officers, and Simon Ackerman, May Ackerman, Myron Ackerman, and Raymond Ackerman, individually and as officers and directors of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of clothing in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly:

(1) That respondents or any of them are discontinuing, retiring from, or going out of, the clothing business, unless the respondents referred to are in fact withdrawing from and severing all connection with such business.

(2) That the prices at which respondents' merchandise is offered for sale and sold at retail are special or reduced prices, when such prices are in fact the usual and customary retail prices of such merchandise.

(3) That respondents are custom tailors, unless and until their garments are actually cut and made to the individual measurements of the purchasers thereof.

It is further ordered, That the respondents shall within 60 days from the date of service upon them of this order, file with the Commission a report in writing setting forth the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF

BEN LEVY, AND FRANCES LEVY, TRADING AS
GOLDWYN COMPANY AND JOHN BAKER COMPANY

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

Docket 5417. Complaint, Jan. 24, 1946—Decision, May 15, 1946

Where two partners engaged in competitive interstate sale and distribution of candy and novelty merchandise so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consuming public, a typical assortment consisting of 18 boxes of candy in a cedar chest, along with a 6-section punch board for use in their sale and distribution under a plan by which chance selection of certain numbers entitled customers to a box of candy, as did last sale in each of the first 5 sections, and maker of last punch received the chest—

Sold such assortments to wholesalers, jobbers, and retailers, by whom they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan, involving a game of chance or sale of a chance to procure candy and merchandise assortments at much less than their normal retail price; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in sale thereof, contrary to an established public policy of the United States Government and in competition with many who do not use a sales method contrary to public policy;

With the result that many persons were attracted by said sales plan and the element of chance involved therein, and were thereby induced to buy and sell their candy and merchandise assortments in preference to those of said competitors, and with tendency and capacity thereby to unfairly divert trade in commerce to them from said competitors:

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

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

Smith, Bundeson, White & Raynor, 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 Ben Levy and Frances Levy, individuals and copartners trading as Goldwyn Co. and John Baker 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 interest of the