

Complaint

IN THE MATTER OF

SAMUEL SCHREIBERSDORF ET AL. DOING BUSINESS AS
TRAVELLERS LUGGAGE CO.

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

Docket 5205. Complaint, Aug. 19, 1944—Decision, Mar. 14, 1947

Where seven partners engaged in the interstate sale and distribution, both at wholesale and at retail, of luggage and other items including golf equipment, brief cases, wallets, ladies' handbags, umbrellas, and fountain pens; and in issuing and furnishing, in connection with the operation of their retail store, certain "discount cards" which they caused to be distributed among members of the public, and usually delivered to personnel managers and purchasing agents of large industries and banking concerns located in New York City, for distribution among the latter's employees, and which set forth, in addition to the partners' trade name, address, etc. that "The bearer ----- employed by ----- is entitled to a special discount of 40 percent from our list price";

Represented through said cards that the recipients could, by use thereof, purchase merchandise at prices 40 percent lower than their customary retail prices, The facts being that they marked up the prices on their merchandise in such manner that after the purported discount was allowed, the remaining net prices represented the regular retail prices;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public aware of the recognized wholesaler's custom of quoting "list" or "catalog" prices which are subject to discount to retailers; with respect to the actual prices and values of their merchandise, and thereby to cause such public to purchase substantial quantities thereof:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. Henry W. Fried, of New York City, 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 Samuel Schreibersdorf, Louis Schreibersdorf, Julius Schreibersdorf, Sidney Schreibersdorf, Saul Schreibersdorf, Joseph Schreibersdorf, and Bertha Schreibersdorf, trading as Travellers Luggage Co., a copartnership, hereinafter referred to as respondents, have violated the provisions of

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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. Respondents Samuel Schreibersdorf, Louis Schreibersdorf, Julius Schreibersdorf, Sidney Schreibersdorf, Saul Schreibersdorf, Joseph Schreibersdorf, and Bertha Schreibersdorf are copartners trading in the name of Travellers Luggage Co., with their principal office and place of business located at 7 Broadway, New York City, New York.

PAR. 2. Respondents are now and for several years last past have been engaged in the business of selling and distributing at retail golf equipment, trunks, brief cases, fitted luggage, gladstones, wallets, umbrellas, fountain pens, novelties, and other articles of merchandise.

In the course and conduct of their said business, respondents have caused the said products, when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia, most of whom do not buy said products for resale or retail.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce between and among 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 merchandise, the respondents have disseminated and now disseminate many false and deceptive statements and representations with respect to the nature and character of their business and the sale prices of their various articles of merchandise. Such statements and representations have been and are being made and disseminated by means of price tags affixed to the merchandise and by "discount cards" and other advertising media periodically issued and distributed to purchasers and prospective purchasers and to their customers and prospective customers, among others, business concerns for their use and for the use of their employees and others, the most of whom buy for their own use or the use of the employees and not for resale. On said price tags, discount cards, and other advertising media featuring said products respondents represent and state the prices of the various articles of merchandise. The discount cards on their face state:

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TRAVELLERS LUGGAGE CO.

7 Broadway New York City

* * * * *

The bearer-----

Employed by-----

Is entitled to a special discount of 40 percent from our list price.

and on the back state:

TRAVELLERS LUGGAGE CO.

7 Broadway New York City

Golf equipment

Trunks Wallets

Brief cases Umbrellas

Fitted luggage Fountain pens

Gladstones Novelties

Ladies' hand bags

PAR. 4. It has been and is a recognized business custom for wholesalers to publish or quote "list" or "catalog" prices which are subject to discount to retailers, the difference between the net price and the list price or catalog price representing the profit to the retailer with the list or catalog prices being the approximate prices at which the merchandise is expected to be sold at retail. The public is well aware of such long established custom and relies thereon and it has come to believe that the list or catalog prices are approximately the usual and ordinary retail prices and that any dealings by which any price reduction is obtained below such list or catalog prices represent and are savings from regular retail prices.

PAR. 5. By and through the use of the stated prices with the words "The bearer is entitled to a special discount of 40 percent from our list price," respondents represent that they are other than retailers and are in fact wholesalers of their merchandise; that the stated prices set out on their price tags and discount cards are the prices at which such merchandise or comparable merchandise is ordinarily sold by retailers and that the differences between the listed prices and the net prices, that is the listed prices less the stated discounts, represent and are savings to purchasers from the customary and usual retail prices.

PAR. 6. All of the foregoing statements and representations are false, deceptive, and misleading. In truth and in fact respondents are retailers and not wholesalers. Over 90 percent of respondents' merchandise is sold by them at retail based on fictitious list prices and false discounts of 40 percent. The stated prices or list prices used by respondents are fictitious and substantially in excess of prices at which said merchandise is sold or is expected to be sold at retail. Said

prices, after the application of the discounts, are substantially in excess of the prices at which wholesalers or distributors offer for sale and sell the same, or comparable articles of merchandise, and are not the regular prices at which said merchandise is ordinarily and usually sold at wholesale. Respondent's so-called stated prices or list prices are not prices at all but are arbitrarily fixed amounts which, when reduced by the stated discounts, are approximately the regular and customary retail prices for which the various articles, or comparable articles, are offered for sale and sold by respondents and other retail dealers in the normal and usual course of business.

PAR. 7. Such false, misleading, and deceptive statements and representations made by respondents, as aforesaid, constitute and are a complete plan and scheme of advertising and price quotation designed to induce the erroneous belief in the prospective and purchasing consumer-user public that respondents are wholesalers selling to firms, groups of individuals, and to individuals at prices approximating the prices at which retailers can and do buy the same or comparable merchandise at wholesale prices.

PAR. 8. A substantial part of the consumer-user public has a preference for buying merchandise, including the classes of merchandise sold by respondents, directly from wholesalers or jobbers, believing that by so doing they obtain lower prices, superior quality of merchandise, and other advantages.

PAR. 9. The acts and practices of the respondents in using the foregoing false, deceptive, and misleading statements and representations 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 said statements and representations were and are true. As a result of such induced erroneous and mistaken belief, a substantial number of the purchasing public have purchased respondents' merchandise.

PAR. 10. The aforesaid acts and practices of the respondents, 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 August 19, 1944, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of un-

fair 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, hearings were held before a trial examiner of the Commission theretofore duly designated by it, at which testimony and other evidence were introduced in support of and in opposition to the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); 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, Samuel Schreibersdorf, Louis Schreibersdorf, Julius Schreibersdorf, Sidney Schreibersdorf, Saul Schreibersdorf, Joseph Schreibersdorf, and Bertha Schreibersdorf, are copartners trading under the name Travellers Luggage Co. They are engaged in the sale and distribution, both at wholesale and at retail, of luggage and various others items of merchandise, including golf equipment, brief cases, wallets, ladies' handbags, umbrellas, and fountain pens. Their retail store is located at 7 Broadway, New York, N. Y. Their wholesale business is conducted from other locations in New York City.

PAR. 2. In the course and conduct of their business, both at wholesale and at retail, respondents cause and have caused their products, when sold, to be transported from their places of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and have maintained a course of trade in their products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the operation of their retail store and for the purpose of inducing the purchase of their merchandise by the public at retail from such store, respondents have issued and caused to be distributed among members of the public cards known as "discount cards." These cards were usually delivered by respondents to personnel managers and purchasing agents of large industrial and banking concerns located in New York City, and were distributed by such individuals

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among the employees of their respective concerns. These discount cards read as follows:

TRAVELLERS LUGGAGE CO.
7 Broadway New York City
Digby 4-8260

The bearer-----

Employed by-----

Is entitled to a special discount
of 40 percent from our list price.

PAR. 4. It is a recognized business custom for wholesalers to publish or quote "list" or "catalog" prices which are subject to discount to retailers, the list price being the approximate price at which the merchandise is expected to be sold at retail, and the difference between the list price and the net price representing the profit to the retailer. The public is aware of such custom and believes that the list price is approximately the usual and customary retail price, and that any reduction below the list price represents a saving from the retail price. Respondents' discount cards constituted a representation by them that the recipients of such cards could, by the use thereof, purchase merchandise from respondents at prices 40 percent lower than the prices at which such merchandise was usually and customarily sold by respondents at retail in the regular and normal course of business.

PAR. 5. This representation was erroneous and misleading. The fact was that in order to be able to appear to allow a discount of 40 percent, respondents marked up and increased the prices on their merchandise (except those items on which the manufacturer had fixed the retail price) in such manner that after the purported discount was allowed the remaining net prices represented the real retail prices of the merchandise, that is, the prices at which the merchandise was regularly and customarily sold at retail by respondents in the usual and normal course of business.

PAR. 6. The acts and practices of respondents, as herein set forth, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the actual prices and values of respondents' merchandise, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' merchandise as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Samuel Schreibersdorf, Louis Schreibersdorf, Julius Schreibersdorf, Sidney Schreibersdorf, Saul Schreibersdorf, Joseph Schreibersdorf, and Bertha Schreibersdorf, individually and as copartners trading as Travellers Luggage Company, or trading under any other name, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of luggage and other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing through the use of "discount cards" or by any other means that merchandise may be purchased from respondents at a discount or at special or reduced prices, when the prices at which such merchandise is actually sold are in fact the prices at which such merchandise is usually and customarily sold by respondents in the regular and normal course of business.

It is further ordered, That the respondents shall, within 60 days after the 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.

IN THE MATTER OF

ISIDORE GENDELMAN AND SAMUEL GENDELMAN DOING
BUSINESS AS AMERICAN SALES CO., UNIVERSAL BAR-
GAIN HOUSE, AND NATIONAL SALES CO.

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

Docket 5331. Complaint, June 11, 1945—Decision, Mar. 20, 1947

Where two partners engaged in the interstate sale and distribution of used or second-hand wearing apparel and other merchandise to retail dealers and to the consuming public; through statements in catalogs disseminated to prospective purchasers in various places throughout the United States, among other things—

- (a) Represented that their merchandise was acquired by them direct from bankrupt stocks, manufacturers' surpluses, auction stocks, close-out lots and manufacturers' sample lots and as a consequence was sold by them at greatly reduced prices;

The facts being that they obtained their products from concerns which had themselves bought such stocks, surpluses, and close-out and sample lots;

- (b) Falsely represented that they made many of the items sold by them;
- (c) Represented that the garments sold by them were always cleaned, repaired, and pressed, that their second-hand garments were only slightly used, and that the illustrations in their said catalogs correctly represented the garments which they sold;

The facts being that, on the contrary, their merchandise was frequently worn, soiled, unpressed, and in poor condition;

- (d) Falsely represented that some of their garments were tailored to the customer's measurements, and that they handled no inferior grades of merchandise;

The facts being they tailored no garments to the customer's measurements but only made alterations, and practically all their merchandise was used or second-hand, and much was of an inferior grade; and

Where said partners, engaged also in buying and in reselling to retailers or the public old, worn and previously used hats which they had cleaned, dyed, and blocked, and provided with new trimmings, sweat bands and linings, so that they had the appearance of new—

- (e) Sold said hats with no label or marking to indicate to purchasers that they were in fact used or second-hand products;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the character, quality, condition, and value of their products, and thereby to cause it to purchase substantial quantities thereof, and with the result of placing in the hands of retailers a means and instrumentality whereby they were able to mislead and deceive the purchasing public with respect to aforesaid hats, which, when offered to the public without being clearly and conspicuously labeled as used or second-hand, are readily accepted by members thereof as being new products: