

Syllabus

IN THE MATTER OF

JOSEPH SCHECTER AND ARNOLD STOCKENBERG, TRADING AS S & S TIE CO.

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

Docket 5110. Complaint, Jan. 3, 1944—Decision, June 5, 1947

Where two individuals, engaged in the interstate sale and distribution of patterns and printed instructions for use in making neckties, and in soliciting persons to make such products, through such want ads in newspapers and periodicals and other advertising media as "Make money sewing at home. No selling. Materials furnished. Easy. Pleasant. Write," etc., and "Money for your spare time sewing at home."—

- (a) Falsely represented through statements made in form letters sent to those replying thereto that the contract offered by them was a contract for services, incident to which they would pay the makers of the ties 15 cents apiece, and that the sum of \$7 required thereby to be paid to them by applicants for positions as such makers was solely to defray the cost of patterns and instructions;

The facts being that, on the contrary, the contract offered by them was a contract of purchase and sale of materials, patterns and instructions for making neckties, and the \$7 required to be remitted was the purchase price for the "kit" of materials, patterns, and instructions; and

- (b) Represented that they would furnish the materials for making the neckties in sufficient quantities to insure continuous, profitable employment, without charge in addition to said stated payment of \$7;

The facts being that, following the receipt of the money and the signed agreement referred to and the shipment to applicants of patterns and instructions and sufficient material to make two neckties, they did not, in accordance with their undertaking, furnish materials in sufficient quantities to afford continuous or profitable employment without further charge;

With effect of misleading and deceiving a substantial number of the purchasing public into erroneous beliefs, and thereby into the purchase of substantial quantities of their said products, and with capacity and tendency so to do:

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.

In proceeding in question in which respondent sellers of patterns and printed instructions for use in making neckties, were also charged, in addition to misrepresenting the nature of their contract as one for service, and failure to abide by their undertaking to supply materials, with falsely representing that they were makers and vendors of neckties and would absorb all shipping and mailing costs of those entering into employment with them, and would pay the employee makers fifteen cents per tie, there was not sufficient evidence to permit the Commission to make any finding concerning the truth or falsity of such additional alleged misrepresentations, and no finding was made with respect thereto.

Complaint

43 F. T. C.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Mr. Leonard Wilson, of Los Angeles, Calif., 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 Joseph Schecter and Arnold Stockenberg, trading as S & S Tie Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issued its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, Joseph Schecter and Arnold Stockenberg, are individuals doing business under the trade name S & S Tie Co. with their principal office and place of business located at 412 West Sixth, Los Angeles, Calif.

PAR. 2. In the course and conduct of their business, respondents have been for a number of years last past and are now engaged in the sale and distribution of patterns and printed instructions for use in making neckties.

PAR. 3. In the course and conduct of their aforesaid business, respondents shipped said patterns and instructions for making neckties from their place of business in Los Angeles, Calif. to purchasers thereof, located in States other than the State of origin of said shipments, and in the District of Columbia, and there is now and has been at all times mentioned herein, a constant current of trade in said products flowing through and into the several States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business and in the sale of their said products, respondents cause advertisements soliciting persons to make neckties to be inserted in classified ads in newspapers, magazines, and other advertising media, circulated through the United States mails and otherwise in interstate commerce, as follows:

Make money sewing at home. No selling. Materials furnished. Easy. Pleasant. Write S & S Tie Company, 412 West Sixth Street, Los Angeles.

MONEY for your spare time sewing at home. No selling. Material furnished. Easy. Pleasant. Write S & S Tie Company, 412 W. 6, Los Angeles.

Upon receipt of inquiries in response to such advertisements respondents mailed to applicants form letters containing the following representations:

Complaint

You make neckties and we buy them from you at fifteen cents each. We furnish the material and absorb all shipping and mailing costs, so the fifteen cents per tie is all yours. There is no catch. We want you to exchange your sewing skill for cash.

To cover the cost of patterns, printing, etc., there is a charge of \$7.00. We feel sure that in this way we will eliminate the ones who want something for nothing. On receipt of your signed agreement and \$7.00 remittance, we will send you a complete kit of material, patterns and complete instruction. We pay you fifteen cents for each tie completed. When you have converted all the material into ties, we send you a second supply and when that is used up, a third supply, etc. You do not have to send any more money.

Upon receipt of the \$7.00 and the signed agreement referred to in such form letter, respondents shipped to the applicants patterns and instructions and sufficient material to make two neckties.

PAR. 5. By the use of the aforesaid statements and representations, respondents represent that the S & S Tie Co. are makers and vendors of neckties; and that they are soliciting the help of persons to make neckties and that they will furnish the materials for making the neckties in sufficient quantities to insure continuous, profitable employment free and will absorb all shipping and mailing costs and will pay the makers thereof 15 cents per tie.

PAR. 6. In truth and in fact respondents are not makers or vendors of neckties. The contract is not a contract of employment and the material for making ties is not furnished free in sufficient quantities to afford continuous, profitable employment. Said contract is a contract of purchase and sale of materials, patterns and instructions for making neckties; and the \$7 required to be remitted with the signed contract is a purchase price paid by applicants to respondents for the kit of materials, patterns and instructions, and respondents' representation that \$7 is the cost of said patterns and printing is contrary to fact as the value or actual cost thereof is materially less than said amount and the material is not furnished free.

PAR. 7. The use of the descriptive words "Tie Company" in connection with the respondents' trade name S & S Tie Co. misleads and deceives the general public and purchasers into the belief that the said S & S Tie Co. is a maker and vendor of neckties and that the sum of \$7 required by the terms of the contract to be paid to respondents by applicants for positions as makers of neckties is solely for the purpose of defraying the cost of patterns and instructions and that the material for making the ties is furnished free are calculated to induce and have induced purchasers to sign said contract and pay \$7 therefor, who would not purchase respondents' said merchandise if

they were truthfully informed of the fact that said contract is a contract of sale of merchandise and not a contract of employment and that no regular and steady employment is offered or contemplated by said contract.

PAR. 8. Induced so to do by respondents' aforesaid advertisements and representations, substantial numbers of the public have signed said contracts and paid respondents \$7 in pursuance of the requirements thereof, who would not have purchased respondents' said products had they been truthfully informed of the fact that the contract was a contract of sale and purchase of merchandise and not a contract of employment.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 3, 1944, issued and subsequently served its complaint in this proceeding upon the respondents Joseph Schecter and Arnold Stockenberg, trading as S & S Tie 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 respondents' answer thereto, a stipulation was entered into upon the record whereby it was stipulated and agreed by and between counsel for the Federal Trade Commission and the respondents that the facts stipulated on the record might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that said Commission might proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of the trial examiner's report upon the evidence. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer, and stipulation, said stipulation having been approved and accepted; 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, Joseph Schecter and Arnold Stockenberg, are individuals formerly doing business under the trade name

Findings

S & S Tie Co., with their principal office and place of business located at 412 West Sixth Street, Los Angeles, Calif., and were engaged in the sale and distribution of patterns and printed instructions for use in making neckties.

PAR. 2. In the course and conduct of their aforesaid business, respondents shipped said patterns and instructions for making neckties from their place of business in Los Angeles, Calif., to purchasers thereof located in various other States of the United States, and at all times mentioned herein have maintained a course of trade in said products among and between the various States of the United States.

PAR. 3. In the course and conduct of their business and in the sale of their said products, respondents solicited persons to make neckties through advertisements inserted in classified ads in newspapers, magazines, and other advertising media circulated through the United States mails and otherwise in interstate commerce, which advertisements were as follows:

Make money sewing at home. No selling. Materials furnished. Easy. Pleasant. Write S & S Tie Company, 412 West Sixth Street, Los Angeles.

* * * * *

MONEY for your spare time sewing at home. No selling. Material furnished. Easy. Pleasant. Write S & S Tie Company, 412 W. 6, Los Angeles.

Upon receipt of inquiries in response to such advertisements respondents mailed to applicants form letters containing the following representations:

You make neckties and we buy them from you at fifteen cents each. We furnish the material and absorb all shipping and mailing costs, so the fifteen cents per tie is all yours. There is no catch. We want you to exchange your sewing skill for cash.

To cover the cost of patterns, printing, etc., there is a charge of \$7.00. We feel sure that in this way we will eliminate the ones who want something for nothing. On receipt of your signed agreement and \$7.00 remittance, we will send you a complete kit of material, patterns, and complete instructions. We pay you fifteen cents for each tie completed. When you have converted all the material into ties, we send you a second supply and when that is used up, a third supply, etc. You do not have to send any more money.

Upon receipt of \$7 and the signed agreement referred to in such form letter, respondents shipped to the applicants patterns and instructions and sufficient material to make two neckties.

PAR. 4. By the use of the aforesaid statements and representations, respondents represented that the S & S Tie Co. was a vendor of neckties; that they were soliciting the help of persons to make neckties; that they would furnish the materials for making the neckties in sufficient quantities to insure continuous, profitable employment and would absorb all shipping and mailing costs and would pay the

makers thereof 15 cents per tie; and that the sum of \$7 required by the terms of the contract to be paid to respondents by applicants for positions as makers of neckties was solely for the purpose of defraying the cost of patterns and instructions.

PAR. 5. Certain of these representations were false, misleading, and deceptive. As a matter of fact, the contract offered by respondents was not a contract for services, but, on the contrary, was a contract of purchase and sale of materials, patterns, and instructions for making neckties, and the \$7 required to be remitted with the signed contract was the purchase price paid by applicants to respondents for the kit of materials, patterns, and instructions. Respondents did not furnish materials in sufficient quantities to afford continuous or profitable employment without charge in addition to the stated payment of \$7. As to the other representations alleged in the complaint in this proceeding, there is not sufficient evidence to permit the Commission to make any finding concerning their truth or falsity, and no finding is made with respect to them.

PAR. 6. The use of the aforesaid false, misleading, and deceptive statements and representations had the capacity and tendency to, and did in fact, mislead and deceive a substantial number of the purchasing public into erroneous and mistaken beliefs, and as a result thereof, into the purchase of substantial quantities of respondents' said products.

CONCLUSION

The aforesaid acts and practices of the respondent 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, the answer of the respondents, and a stipulation as to the facts entered into upon the record between counsel for the Federal Trade Commission and the respondents which provides, among other things, that the Commission may proceed on said statement of facts to make its report stating its findings as to the fact (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 or of a report upon the evidence by the trial examiner, and the Commission having made its findings as to

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

It is ordered, That respondents, Joseph Schechter, an individual, and Arnold Stockenberg, an individual, jointly or severally, trading as S & S Tie Co. or trading under any other name, their agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of materials, patterns, or instructions for making neckties or other articles, do forthwith cease and desist from representing, directly or by implication:

1. That a contract of sale is a contract for services; or otherwise misrepresenting the character or terms of contracts offered.

2. That materials for processing will be furnished in sufficient quantities to afford continuous or profitable employment without any charge in addition to a stated payment, unless this is in fact done.

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 are complying with this order.

IN THE MATTER OF

MOHAWK CHEMICAL PRODUCTS, INC., AND BAINBRIDGE,
KIMPTON & HAUPT, INC.

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

Docket 5200. Complaint, Aug. 3, 1944—Decision, June 10, 1947

Where two corporations engaged in the interstate sale and distribution of their "Sten-O-Fren" fluid, recommended for use on typewriter platens and other rubber articles and to clean typewriter type, and which was a solvent useful in removing accumulations of dirt, wax, and grease; in folders, pamphlets, circular letters, and other advertising material, directly or by implication—

Represented that their said product made rubber platens and feed rolls like new; revitalized, revived and renewed old or hardened rubber articles and caused them to function like new; removed therefrom all indications of use, wear or age; and restored their original pliability and efficacy;

The facts being that the effect of their said product was to swell soft rubber temporarily, and soften and slightly swell the surface of hardened rubber; and while in certain instances where performance is largely dependent upon the surface condition of a rubber article, said product might cause it to function temporarily like new and, in the case of old, glazed, and hardened typewriter platens and feed rolls, cause them to grip and hold paper more firmly and increase the cushioning effect, it would not materially affect the functioning of many rubber articles;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of substantial quantities thereof:

Held, That such acts and practices were all to the injury and prejudice 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.

Mr. Leon Edelson, of Philadelphia, Pa., for Mohawk Chemical Products, Inc.

Mr. William H. Greenleaf, of New York City, for Bainbridge, Kimpton & Haupt, Inc.

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 Mohawk Chemical Products, Inc., a corporation, and Bainbridge, Kimpton & Haupt, Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission