

## Syllabus

## IN THE MATTER OF

PLAZA LUGGAGE & SUPPLY CO., INC., AND BENJAMIN  
GOLDSTEIN AND ABRAHAM GOLDSTEIN, TRADING AS  
U. S. LUGGAGE & LEATHER PRODUCTS CO.

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

*Docket 4857. Complaint, Oct. 19, 1942—Decision, Jan. 30, 1948*

Where two partners engaged in the interstate sale and distribution of a substantial volume of luggage, billfolds, and kindred merchandise to customers who included business concerns and groups of associated individuals buying for their own use or that of their employees and not for resale; and operating in conjunction with a certain corporation, since dissolved, in carrying on their said business, particularly with respect to the acts and practices herein concerned—

- (a) Represented that they manufactured the merchandise sold or distributed by them through use in their catalogs and on letters, cards and billheads of such expressions as "Manufacturers: Luggage," etc., "Designers and Manufacturers", etc., and "Mfrs. Luggage and Leather Products," etc., and through depictions in catalogs of factory operations showing products in various stages of manufacture; and
- (b) Represented that the prices set out in their catalogs were the prices at which merchandise concerned or comparable merchandise was ordinarily sold by retailers, and that the stated discounts represented savings to purchasers from the usual retail prices, through depicting practically all items offered for sale in their catalogs together with list prices and such statements as "50% discount on all prices in this catalog";

The facts being that said individuals were neither wholesalers nor manufacturers, but retailers; so-called list or catalog prices were not, as understood by the public on the basis of recognized business custom, approximate retail prices, discount from which represented retailer's profit, but were arbitrarily fixed amounts which, when reduced by the stated discounts, resulted in the customary retail prices for which the articles were sold by said individuals and other retailers in the usual course of business; they never owned a manufacturing plant or equipment but bought their merchandise from others; and prices in question, after application of discounts involved, were substantially in excess of those at which manufacturers, wholesalers, or distributors sold comparable merchandise, and were not wholesale prices;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public, which prefers to buy merchandise directly from manufacturers and wholesalers as affording lower prices, superior quality, and other advantages, into the mistaken belief that they could obtain the merchandise advertised by said individuals at wholesale prices, and that they were dealing direct with the manufacturers, and with capacity thereby to induce purchasers to buy their products:

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*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:

*Mr. B. G. Wilson* for the Commission.

*Mr. Benjamin Goldstein* and *Mr. Henry A. Robinson*, 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 the Plaza Luggage & Supply Co., Inc., a corporation, Benjamin Goldstein and Abraham Goldstein, copartners, trading and doing business as U. S. Luggage & Leather Products 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. Respondent, Plaza Luggage & Supply Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York. Benjamin Goldstein and Abraham Goldstein are copartners trading and doing business under the firm name and style of U. S. Luggage & Leather Products Co. While the corporate respondent and the partnership are organized as separate concerns, their business affairs overlap and are intermingled, and they operate in conjunction and cooperation in carrying on their said businesses, particularly with respect to the acts and and practices hereinafter set forth. The office and principal place of business of all respondents is located at 29 West Thirty-fourth Street, New York, N. Y.

PAR. 2. Respondents are now, and for several years last past have been, engaged in the sale and distribution at retail of a substantial volume of luggage, billfolds, and kindred merchandise. Respondents cause substantial quantities of their said merchandise, when sold, to be shipped from their principal place of business or from their warehouses to various classes of customers located in States other than the State in which such shipments originate. Respondents now maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid businesses 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 character of their businesses and the sale prices of their various articles of merchandise. Such statements and representations have been and are being made and disseminated largely by means of catalogs periodically issued and distributed to their customers and prospective customers including, among others, business concerns for their use and the use of their employees and to groups of associated individuals, all of whom buy for their own use or the use of their employees and not for resale. In addition, statements and representations are also made on letterheads, invoices, billheads, cards, and other written and printed matter circulated among purchasers and prospective purchasers. Said catalogs above referred to set forth pictorial representations of practically all of the items offered for sale, together with stated prices of the various items usually designated as "list" prices. In some catalogs a separate sheet is attached which states: "50% discount on all prices in this catalog." In other catalogs the quoted statement is printed on one or more of the pages therein.

In their catalogs and on letterheads, cards and billheads, the respondents use and have used, among others, the following expressions:

Manufacturers: Luggage—Leather Goods—Specialties;

Designers and Manufacturers of Sample Cases and Specialties; and

Mfrs. Luggage and Leather Products in Leather-Imitation Canvas and Fiber.

In certain catalogs respondents print pictures detailing various factory operations in which products are depicted in various stages of manufacture, thereby enhancing the representations that they manufacture the products sold by them.

PAR. 4. It has been and is a recognized business custom for manufacturers and wholesalers to publish or quote list or catalog prices which are subject to discount to retailers, the difference between the net prices and the list or catalog prices representing the profit to the retailers, 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 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 list prices with discounts and the words "Manufacturers" and "Mfrs.," together with pictorial representations of manufacturing processes, respondents represent that

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they are other than retailers and are in fact manufacturers or wholesalers of their products; that the prices set out in their catalogs are the prices at which such merchandise, or comparable merchandise, is ordinarily sold by retailers and that the difference between the list or catalog price and the net prices; that is, the list or catalog 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 or manufacturers. The catalog 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. The prices, after application of the discounts, are substantially in excess of the prices at which manufacturers, wholesalers, or distributors offer for sale and sell the same or comparable articles of merchandise and are not wholesale prices. Respondents' so-called catalog 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 retailers in the usual course of business. The respondents do not own, operate, or control the plant, equipment, or machinery wherein and whereby their merchandise is manufactured and produced, but buy such merchandise from others.

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 or manufacturers 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 or factory 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 manufacturers and wholesalers, believing that by so doing they obtain lower prices, superior quality 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

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erroneous and mistaken belief that said statements, representations, and advertisements 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 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 October 19, 1942, issued and subsequently served its complaint in this proceeding upon the respondents, Plaza Luggage & Supply Co., Inc., a corporation, and Benjamin Goldstein and Abraham Goldstein, copartners, trading as U. S. Luggage & Leather Products 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 the said complaint and the filing of the answer of the respondents thereto, a stipulation as to the facts was entered into between Daniel J. Murphy, Chief of Trial Division, and the respondents, by their attorney, subject to the approval of the Commission, whereby it was stipulated that the statement of facts set out in said stipulation might be taken as the facts of this proceeding and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto and that the Commission might proceed upon the complaint, answer of the respondents, and said statement of facts to make its report stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without any intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, and stipulation, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

**FINDINGS AS TO THE FACTS**

PARAGRAPH 1. Respondent Plaza Luggage & Supply Co., Inc., was a corporation formerly existing and doing business under and by

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virtue of the laws of the State of New York. This corporation was dissolved on January 28, 1943, and is no longer in business.

Respondents, Benjamin Goldstein and Abraham Goldstein, are copartners trading and doing business under the firm name and style of U. S. Luggage & Leather Products Co. and maintain their principal office and place of business at 29 West Thirty-fourth Street, New York, N. Y. While the corporate respondent and the said copartnership were organized as separate concerns, during the existence of the corporation their business affairs overlapped and intermingled and they operated in conjunction and cooperation with each other in carrying on their said businesses, particularly with respect to the acts and practices hereinafter set forth.

PAR. 2. The respondents, Benamin Goldstein and Abraham Goldstein, trading as U. S. Luggage & Leather Products Co., during the existence of the corporate respondent and subsequent thereto were engaged in the sale and distribution of a substantial volume of luggage, billfolds, and kindred merchandise. Said respondents caused such merchandise, when sold, to be transported from their place of business in the city of New York and State of New York to purchasers thereof located in various other States of the United States. Said respondents maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce among and between the several 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 statements and representations with respect to the character of their business and the sale prices of their various articles of merchandise. Such statements and representations have been made and disseminated largely by means of catalogs periodically issued and distributed to their customers and prospective customers including, among others, business concerns for their use and the use of their employees and to groups of associated individuals, all of whom buy for their own use or the use of their employees and not for resale. In addition, statements and representations were also made on letterheads, invoices, billheads, cards, and other written and printed matter circulated among purchasers and prospective purchasers. Such catalogs above referred to set forth pictorial representations of practically all of the items offered for sale, together with stated prices of the various items usually designated as "list" prices. In some catalogs a separate sheet was attached which stated: "50% discount on all prices in this catalog." In other catalogs the quoted

statement was printed on one or more of the pages therein. In their catalogs and on letterheads, cards, and billheads, the respondents have used, among others, the following expressions:

Manufacturers: Luggage—Leather Goods—Specialties;

Designers and Manufacturers of Sample Cases and Specialties; and

Mfrs. Luggage and Leather Products in Leather-Imitation Canvas and Fiber.

In certain catalogs respondents printed pictures detailing various factory operations in which products were depicted in various stages of manufacture, thereby enhancing the representations that they manufacture the products sold by them.

PAR. 4. It has been and is a recognized business custom for manufacturers and wholesalers to publish or quote "list" or "catalog" prices which are subject to discount to retailers, the difference between the net prices and the list or catalog prices representing the profit to the retailers, 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 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 list prices with discounts and the words "Manufacturers" and "Mfrs.," together with pictorial representations of manufacturing processes, respondents represented that they were other than retailers and were in fact manufacturers or wholesalers of their products; that the prices set out in their catalogs were the prices at which said merchandise, or comparable merchandise, were ordinarily sold by retailers; and that the difference between the list or catalog price and the net prices, that is, the list or catalog prices less the stated discounts, represented and were savings to purchasers from the customary and usual retail prices.

PAR. 6. All of the foregoing statements and representations were false, deceptive, and misleading. In truth and in fact respondents were retailers and not wholesalers or manufacturers. The catalog or list prices used by respondents were fictitious and substantially in excess of prices at which said merchandise was sold or was expected to be sold at retail. The prices, after application of the discounts, were substantially in excess of the prices at which manufacturers, wholesalers, or distributors offered for sale and sold the same or comparable articles of merchandise and were not wholesale prices. Respondents' so-called catalog or list prices were not prices at all, but were

arbitrarily fixed amounts which, when reduced by the stated discounts, were approximately the regular and customary retail prices for which the various articles, or comparable articles, were offered for sale and sold by respondents and other retailers in the usual course of business. The respondents have never owned the plant, equipment, or machinery wherein and whereby their merchandise was manufactured and produced, but have bought such merchandise from others.

PAR. 7. Such false, deceptive, and misleading statements and representations made by respondents as hereinabove described constituted and were a complete plan and scheme of advertising and price quotations designed to induce the erroneous belief in the prospective and purchasing consumer-user public that respondents were wholesalers or manufacturers 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 or factory 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 manufacturers and wholesalers, believing that by so doing they obtain lower prices, superior quality, and other advantages.

PAR. 9. The acts and practices of the respondents in using the foregoing false, deceptive, and misleading statements and representations had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that they could obtain the merchandise advertised by the respondents at wholesale prices and that they were dealing direct with the manufacturer of such products, and also had the capacity to induce purchasers, because of such erroneous and mistaken belief, to purchase respondents' merchandise.

#### CONCLUSION

The acts and practices of 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, the answer of the re-

spondents, and a stipulation as to the facts, in which stipulation the respondents waived all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to the facts and conclusion that the respondents, Benjamin Goldstein and Abraham Goldstein, copartners trading and doing business as U. S. Luggage & Leather Products Co., have violated the provisions of the Federal Trade Commission Act:

*It is ordered*, That the respondents, Benjamin Goldstein and Abraham Goldstein, individually and trading as U. S. Luggage & Leather Products Co. or trading under any other trade name, and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of luggage, billfolds, and other items of merchandise 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 manufacture the merchandise sold or distributed by them through the use of the term "manufacturer" or "Mfrs." or any other term or abbreviation of similar import or meaning on billheads, stationery, in advertising, or in any other manner.

2. Using pictorial representations of manufacturing processes in such a manner as to represent or imply that respondents manufacture the merchandise described by such pictorial representations.

3. Using the term "list price," "catalog price," or any other term of similar import or meaning to designate, describe, or refer to prices which are not in fact the bona fide regular established selling prices of the merchandise offered for sale as established by the usual and customary sales in the normal course of business.

4. Representing as a catalog, list, or retail price any fictitious price which is in excess of the price at which the article of merchandise is sold or is expected to be sold at retail.

5. Representing that respondents are selling their merchandise at wholesale prices by allowing discounts from list, catalog, or retail prices when such prices, after application of such discounts, are in excess of the usual or customary prices at which manufacturers, wholesalers, or distributors offer for sale or sell the same or comparable articles of merchandise in the normal course of business.

6. Representing that any specified saving or discount from the retail price is offered purchaser upon purchase of any article of merchandise when such saving or discount is based upon a fictitious retail price.

## Order

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*It is further ordered*, That the complaint be, and the same hereby is, dismissed as to the respondent Plaza Luggage & Supply Co., Inc., a corporation.

*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.

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## IN THE MATTER OF

THE RUBBER MANUFACTURERS ASSOCIATION,  
INC., 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 5448. Complaint, June 28, 1946—Decision, Feb. 2, 1948*

Where certain corporations, members of the Heel and Sole Division of the Rubber Manufacturers Association or of the Rubber Heel and Sole Manufacturers Association, and a nonmember corporation, engaged in the manufacture and interstate sale and distribution of rubber heels, rubber soles, and products accessory thereto, and in active substantial competition with each other except insofar as competition had been restricted or forestalled by the understandings, etc., below set out; together with said associations, and the chairman of the former, and the general director of the latter, since deceased, acting as parties to understandings, etc., below set-out, and as participants in acts and practices done pursuant thereto,

- (a) Engaged in organizing, developing and perfecting a combination, agreement, and planned common course of action to suppress and eliminate competition as to prices and otherwise, among themselves and among the jobbers of their products; and

Where said manufacturers and said individuals, as steps in and toward the accomplishment of the objective above set out, and pursuant to the said combination, etc.—

- (b) Endeavored to restrict price competition among themselves and among their jobbers by (1) agreements among themselves on the selling prices and the terms and conditions of sale for their products; (2) agreements among themselves as to the standards of quality to which such agreements and prices should be applied; and (3) agreements between the particular manufacturers and their respective jobber customers on the resale prices to be charged by the latter; continuing the terms and conditions of sale and the standards of quality so agreed upon, or supplementing the same, so as to form the foundation for subsequent agreements; and

Where said manufacturers, acting as aforesaid—

- (c) Sought also to prevent price competition among themselves by systematically interchanging their price lists and current selling prices, and undertaking to make changes therein only after notice to each other; and

Where said associations of manufacturers, and their officers, acting as aforesaid—

- (d) Undertook by a planned common course of action among themselves to fix uniform prices for their product when sold to jobbers, and also to fix uniform prices at which the jobbers would sell said commodities to shoe repairmen; fixing such uniform resale prices for various sections and areas comprising the entire country, with said jobbers' collaboration and cooperation as finally expressed in contracts entered into by some of the manufacturers with their respective jobbers;