

Syllabus

IN THE MATTER OF

CONNECTICUT LEATHER & FINDINGS 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 5527. Complaint, Feb. 2, 1948—Decision, July 23, 1948*

Where eight trade association members, engaged in the purchase of rubber heels and soles and products accessory thereto from manufacturers and distributors, who were in competition with each other in the sale thereof except as it had been hindered, etc., as below set forth; and in the interstate sale and distribution of said products to retail customers, in competition also with one another and with other jobbers except as hindered, etc., as hereinafter set out—

- (a) Engaged, for more than 12 years last past, among themselves and between themselves and various manufacturers of aforesaid products, in organizing, developing, and perfecting a planned common course of action, combination and conspiracy to suppress and eliminate competition as to price, and otherwise, among themselves and among said manufacturers; and

Where their trade association, its officers, directors, and members, pursuant to said purpose and objective, at meetings of said association and otherwise—

- (1) Agreed upon uniform prices which said members and other jobbers would charge their retail customers for rubber heels, soles, and products accessory thereto;
- (2) Agreed upon uniform schedules to be used in the calculation of such prices; and
- (3) Agreed to maintain such fixed prices by means of contracts, warnings, threats, and injunctions, and did in fact so maintain them; and

Where said trade association, its officers, directors, and members—

- (b) Acted concertedly to induce, by means of threat of boycott and otherwise, said manufacturers of products concerned, to maintain "fair trade contracts" providing resale prices upon their products sold in Connecticut; and
- (c) Acted concertedly to discriminate by giving their patronage to manufacturers offering or utilizing such contracts and by withholding it from others, who did not;

Substantial and dangerous tendency of which acts, practices, and methods, which were all to the prejudice of the public, was to hinder, lessen, restrict, and restrain competition in commerce in sale of products concerned, and effect of which was directly, substantially, and unduly to hinder and restrain such competition:

Held, That such acts, practices, and methods constituted unfair acts and practices in commerce and unfair methods of competition therein.

Mr. L. E. Creel, Jr. and *Mr. Robert R. MacIver* for the Commission.
Mr. Charles Green, of Philadelphia, Pa., for respondents.

Complaint

45 F. T. C.

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 parties named in the caption hereof, and more particularly described and referred to hereinafter as the respondents, have violated the provisions of section 5 of the Federal Trade Commission 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:

DESCRIPTION OF RESPONDENTS

PARAGRAPH 1. Each of the parties hereinafter designated in this paragraph as a respondent is herein made a respondent in this proceeding.

(1) Respondent Connecticut Leather & Findings Association, Inc., a trade association, is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 242 Bank Street, Waterbury, Conn.

(2) Respondent Harry Diamond, an individual, is secretary of respondent Connecticut Leather & Findings Association, Inc. His address is 378 Norton Street, New Haven, Conn.

(3) Respondent Bridgeport Leather Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located in Bridgeport, Conn.

(4) Respondent Maurice Greenberg is an individual trading as Connecticut Leather Co., with his place of business located at 75 Windsor Street, Hartford, Conn.

(5) Respondent Diamond Leather Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 909 Grand Avenue, New Haven, Conn.

(6) Respondent Louis Geghter is an individual trading as Elm City Leather Co., with his place of business located at 112 George Street, New Haven, Conn.

(7) Respondent New Haven Leather Co., Inc., is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 692 Chapel Street, New Haven, Conn.

(8) Respondent Puzzo Brothers Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 234-238 Bank Street, Waterbury, Conn.

(9) Respondents Rochina De Croce and Anthony De Croce are co-partners doing business under the name of Torrington Leather Co., with their principal office located at 81 East Main Street, Torrington, Conn.

(10) Respondent The Zich Leather Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office located at 44-46 Market, Street, Hartford, Conn.

Each of the respondents described in this paragraph, subparagraphs (3) to (10), inclusive, is a member of the respondent Connecticut Leather & Findings Association, Inc., described in subparagraph (1) of this paragraph.

BUSINESS OF RESPONDENTS

PAR. 2. Respondent members of respondent Connecticut Leather & Findings Association are engaged in the business of selling and distributing rubber heels, rubber soles, and products accessory thereto in the State of Connecticut and in States in its immediate vicinity. Such products are purchased from various manufacturers and distributors whose respective principal places of business are located in various States of the United States other than the State of Connecticut. Respondents ship or cause the products so purchased to be shipped from the said States into the State of Connecticut.

The respondent association and its respondent officer are not, in their official capacities, engaged in commerce, but they and each of the other respondents aided, abetted, furthered, cooperated with and were instrumentalities of and parties to, some or all, of the understandings, agreements, combinations and conspiracies hereinafter set out and actively cooperated and participated in the performance of some or all of the acts and practices done in pursuance thereto and in furtherance thereof.

Each of the respondent members of the Connecticut Leather & Findings Association, Inc., in the regular course and conduct of their respective businesses, has been and is in active and substantial competition with each other, and with other jobbers of rubber heels, soles, and products accessory thereto in the sale of the said products in trade and commerce between and among the several States of the United States except insofar as said competition has been hindered, lessened, restricted, or forestalled by the understanding, agreement, combination or conspiracy and acts, things, practices, and methods done and carried on in pursuance thereto and in furtherance thereof as herein-after set forth.

Complaint

45 F. T. C.

Each of the said manufacturers and distributors of rubber heels, soles, and products accessory thereto, in the regular course and conduct of their respective businesses, has been and is in active and substantial competition with each other in the sale of their said products in trade and commerce between and among the several States of the United States and in the District of Columbia except insofar as said competition has been hindered, lessened, restricted, or forestalled by the understanding, agreement, combination or conspiracy and acts, things, practices, and methods done and carried on in pursuance thereto and in furtherance thereof as hereinafter set forth.

OFFENSES CHARGED

PAR. 3. For more than 12 years last past respondents among themselves and between themselves and various manufacturers, distributors and jobbers of rubber heels, soles, and products accessory thereto have been engaged in organizing, developing, and perfecting a combination, conspiracy, and planned common course of action to suppress and eliminate competition as to price and otherwise among themselves and other jobbers and among the said manufacturers. The said manufacturers, distributors, and jobbers, other than the respondent jobbers, have their principal place of business in States of the United States other than the State of Connecticut.

PAR. 4. The respondents, together with the other co-conspirators, have adopted the following methods and practices among others, and have taken the following action as steps in and toward the accomplishment of the purpose and objective as alleged in paragraph 3 hereof:

(1) Respondent Connecticut Leather & Findings Association, Inc., its officers, directors, and members and the said manufacturers, distributors, and jobbers, acting through the officials of their trade associations, and otherwise, at meetings of the respondent association, and otherwise, by combination, conspiracy and planned common course of action agreed:

(a) Upon uniform prices which the respondents and other jobbers would charge their retailer customers for rubber heels, soles, and products accessory thereto; and upon uniform schedules to be used in the calculation of such prices.

(b) Upon uniform resale prices which their retailer customers would charge their customers for attached rubber heels, soles, and products accessory thereto.

(c) To maintain by contracts, warnings, threats, and injunctions the fixed prices and resale attached prices as alleged in subsections (a)

and (b) of this paragraph and did, in fact, so maintain the said fixed prices and resale attached prices.

(2) Respondent Connecticut Leather & Findings Association, Inc., its officers, directors, and members and other jobbers, through their trade associations, and otherwise, acted concertedly to induce by threat of boycott, and otherwise, the said manufacturers of rubber heels, soles, and products accessory thereto to enter into Fair Trade Contracts upon their products sold in the State of Connecticut, and acted concertedly to discriminate with their patronage in favor of manufacturers offering and utilizing such contracts and against manufacturers not so doing.

PAR. 5. The aforesaid acts and practices and methods of respondents as herein alleged are all to the prejudice of the public; they have a substantial and dangerous tendency to hinder, lessen, restrict, and restrain competition in interstate commerce in the sale of rubber heels, soles, and products accessory thereto and actually have unduly, directly, and substantially hindered; restricted, and restrained such competition. The said acts and practices and methods constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of section 5 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 February 2, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with unfair acts and practices in commerce and unfair methods of competition in commerce in violation of the provisions of said act. After respondents filed answer to said complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for respondents herein and Richard P. Whiteley, chief trial counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of evidence in support of or in opposition to the charges stated in the complaint, and that the Commission may proceed upon such statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon and enter its order disposing of this proceeding without a recommended decision by the trial examiner, the presentation of argument, or the filing of briefs. There-

Findings

45 F. T. C.

after, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having considered the same 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. (A) Respondent Connecticut Leather & Findings Association, Inc., a trade association, is a corporation organized and existing under the laws of the State of Connecticut, with its principal office at 242 Bank Street, Waterbury, Conn.

(B) Respondent Harry Diamond, an individual, is secretary of said Connecticut Leather & Findings Association, Inc., with his address at 378 Norton Street, New Haven, Conn.

(C) Respondent Bridgeport Leather Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office in Bridgeport, Conn.

(D) Respondent Maurice Greenberg is an individual trading under the name Connecticut Leather Co., with his principal office at 75 Windsor Street, Hartford, Conn.

(E) Respondent Diamond Leather Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office at 909 Grand Avenue, New Haven, Conn.

(F) Respondent Louis Geghter is an individual trading under the name Elm City Leather Co., with his principal office at 112 George Street, New Haven, Conn.

(G) Respondent New Haven Leather Co., Inc., is a corporation organized and existing under the laws of the State of Connecticut, with its principal office at 692 Chapel Street, New Haven, Conn.

(H) Respondent Puzzo Brothers Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office at 234-238 Bank Street, Waterbury, Conn.

(I) Respondents Rochina De Croce and Anthony De Croce, individuals, are copartners trading under the name Torrington Leather Co., with their principal office at 81 East Main Street, Torrington, Conn.

(J) Respondent The Zich Leather Co. is a corporation organized and existing under the laws of the State of Connecticut, with its principal office at 44-46 Market Street, Hartford, Conn.

(K) The respondents described in subparagraphs (C) to (J), inclusive, of this paragraph are members of respondent Connecticut Leather & Findings Association, Inc., and each is engaged in the business of selling and distributing rubber heels, rubber soles, and products accessory thereto.

PAR. 2. (A) In the course and conduct of their aforesaid businesses, respondent members of the Connecticut Leather & Findings Association, Inc., sell and distribute their aforesaid products in the State of Connecticut and in States in its immediate vicinity. Such products are purchased by them from various manufacturers and distributors thereof, whose respective principal places of business are located in various States other than the State of Connecticut, and said respondents ship products so purchased, or cause them to be shipped, from other States into the State of Connecticut. Each of the members of the Connecticut Leather & Findings Association, Inc., has been, and is, in active and substantial competition with other such members and with other jobbers of rubber heels, soles, and products accessory thereto in the sale of such products in commerce between and among the several States of the United States, except insofar as such competition has been hindered, lessened, restricted, or forestalled by the understandings, agreements, combinations, or conspiracies, and acts, practices, and things done pursuant thereto and in furtherance thereof, as hereinafter set forth. Various manufacturers and distributors of rubber heels, soles, and products accessory thereto from whom respondent members of the Connecticut Leather & Findings Association, Inc., purchase such products have been, and are, in active and substantial competition with each other in the sale of such products in commerce between and among the several States of the United States and in the District of Columbia, except insofar as such competition has been hindered, lessened, restricted, or forestalled by the understandings, agreements, combinations, or conspiracies, and acts, practices, and things done pursuant thereto and in furtherance thereof, as hereinafter set forth.

(B) The Connecticut Leather & Findings Association, Inc., and its said secretary, Harry Diamond, are not in such capacities engaged in commerce, but they and each of the other respondents aided, abetted, furthered, cooperated with, and were instrumentalities of and parties to some or all of the understandings, agreements, combinations, and conspiracies hereinafter set forth and actively cooperated and participated in the performance of some or all of the acts and practices done pursuant thereto and in furtherance thereof.

Conclusion

45 F. T. C.

PAR. 3. For more than 12 years last past respondents herein, among themselves and between themselves and various manufacturers of rubber heels, soles, and products accessory thereto, have been engaged in organizing, developing, and perfecting a planned common course of action, combination, and conspiracy to suppress and eliminate competition as to price, and otherwise, among themselves and among said manufacturers. Pursuant to and as steps in and toward the accomplishment of the purpose and objective of said combination, respondents have among other things, done the following: Respondent Connecticut Leather & Findings Association, Inc., its officers, directors, and members, acting through the officials of their associations and otherwise, at meetings of the Connecticut Leather & Findings Association, Inc., and otherwise, by planned common course of action, combination, and conspiracy, agreed upon uniform prices which respondents and other jobbers would charge their retailer customers for rubber heels, soles, and products accessory thereto, agreed upon uniform schedules to be used in the calculation of such prices, and agreed to maintain such fixed prices, by means of contracts, warnings, threats, and injunctions, and did in fact so maintain such fixed prices. Respondent Connecticut Leather & Findings Association, Inc., its officers, directors, and members, through their trade associations and otherwise, acted concertedly to induce, by means of threat of boycott and otherwise, the said manufacturers of rubber heels, soles, and products accessory thereto, to maintain "fair trade contracts" providing resale prices upon their products sold in the State of Connecticut, and acted concertedly to discriminate by giving their patronage to manufacturers offering or utilizing such contracts and to withhold their patronage from manufacturers not offering and utilizing such contracts.

PAR. 4. The aforesaid acts, practices, and methods of respondents are all to the prejudice of the public, have a substantial and dangerous tendency to hinder, lessen, restrict, and restrain competition in interstate commerce in the sale of rubber heels, soles, and products accessory thereto, and actually have directly, substantially, and unduly hindered and restrained such competition.

CONCLUSION

The aforesaid acts, practices, and methods of respondents constitute unfair acts and practices in commerce and unfair methods of competition in commerce within the intent and meaning of section 5 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, and a stipulation as to the facts entered into between counsel for the respondents herein and Richard P. Whiteley, chief trial counsel for the Commission, which provides, among other things, that without a recommended decision by a trial examiner, the presentation of arguments, or the filing of briefs, the Commission may proceed upon such statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of this proceeding, 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 Bridgeport Leather Co., Diamond Leather Co., New Haven Leather Co., Inc., Puzzo Brothers Co., and The Zich Leather Co., corporations, their respective officers, representatives, and employees; respondents Rochina De Croce and Anthony De Croce, copartners trading as Torrington Leather Co. or under any other name, jointly or severally, their representatives, agents, and employees; and respondents Maurice Greenberg, an individual trading as Connecticut Leather Co. or under any other name, and Louis Geghter, an individual trading as Elm City Leather Co. or under any other name, their respective representatives, agents, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale, and distribution of rubber heels, rubber soles, and products accessory thereto, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following things:

1. Fix, establish, or maintain prices, terms, or conditions of sale for any of said products.
2. Formulate, establish, or maintain schedules used or useful in calculating and arriving at uniform prices for such products.
3. Attempt to bring about or maintain uniform prices for such products by means of contracts, warnings, threats, injunctions, or any similar means.

Order

45 F. T. C.

4. Engage in or threaten to engage in a boycott of any manufacturer of rubber heels, rubber soles, or products accessory thereto as a means of inducing, or seeking to induce, such manufacturer to establish, maintain, or enforce resale prices upon any of said products.

5. Discriminate in purchasing rubber heels, rubber soles, or products accessory thereto, in favor of manufacturers who do, or against manufacturers who do not, establish, maintain, or enforce resale prices upon such products, or any of them.

It is further ordered, That respondent Connecticut Leather & Findings Association, Inc., a corporation, its officers, representatives, agents, and employees, and respondent Harry Diamond, as secretary of said Association, his representatives, agents, and employees, do forthwith cease and desist from instigating, aiding, assisting, or cooperating in doing or performing any of the things prohibited in paragraphs 1 to 5, inclusive, of this order.

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.

Syllabus

IN THE MATTER OF

PHILIP SMITHLINE, MAX SILPE, AND JOSEPH MILLER,
TRADING AS SMITHLINE COATS AND SMITHLINE COAT
CO.

COMPLAINT, FINDINGS, ORDER, AND OPINION IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914,
AND THE WOOL PRODUCTS LABELING ACT OF 1939

Docket 5506. Complaint, July 23, 1947—Decision, July 28, 1948

Where misbranding occurs with respect to products subject to the provisions of the Wool Products Labeling Act, the law contemplates corrective action by the Commission regardless of whether such misbranding is based upon willfulness, negligence, or other causes, and a defense in the nature of a plea of "confession and avoidance" based upon a respondent's alleged good faith and lack of intent to violate the law, is not an appropriate one to such a corrective proceeding.

The Wool Products Labeling Act places the responsibility on the manufacturer and distributor of products subject thereto to label them correctly and in accordance with the terms of said act, and further provides that if the seller does not so label the goods he is guilty of an unfair method of competition and an unfair and deceptive act or practice in commerce within the meaning of the Federal Trade Commission Act. If sellers charged with misbranding certain wool products could plead as an effective defense the fact that they had sold a large number of other wool products which were not misbranded, it would be an unreasonable burden on those charged with its enforcement, and would likewise make the act ineffective. Enforcement must necessarily be on the basis of a sampling of the products of a large number of sellers, and if violation is indicated it would obviously be most impractical and unnecessary to test several thousand or even several hundred of the products of a seller in order to establish the same.

Where three partners engaged in the manufacture and interstate sale and distribution of women's coats—

Sold some 137 coats which they had misbranded in violation of the Wool Products Labeling Act and the Rules and Regulations promulgated thereunder by attaching to them labels bearing the name of the purchaser and the words "Smithline Coats 100% Wool Interlining 100% Cotton"; when in fact the fabric composing the body of the coats was not "100% wool," but was actually 52% wool and 48% rayon:

Held, That such acts and practices of respondents in labeling their coats as above set forth, were in violation of said Wool Products Labeling Act and Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce.

As respects respondents' contention in said proceeding that they were under the mistaken belief that the fabric in question was all wool, that the price paid therefor was within the range of the then current prices for all-wool fabrics, that they did not profit financially through the mistake, that the 137 coats