

Decision

IN THE MATTER OF
RUGS OF THE BLIND, INC., ET AL.DECISION AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6022. Complaint, Aug. 5, 1952—Decision, July 26, 1953

Where a corporation and its officers, engaged in the purchase from the Pennsylvania Association for the Blind of rugs woven by the blind, on hand looms, representing from 20 percent to 25 percent of their total sales volume, and, from a rug mill, of machine-made rugs, the fringes of which were knotted or tied by blind persons in their homes or in the workshops of said Association; and in selling both types of rugs through door-to-door salesmen, whom they supplied with identification cards, order blanks, and advertising booklets which disclosed that some of said products were not made entirely by the blind, and with kits of samples of both types of rugs which contained no disclosure that some were not made by the blind—

- (1) Represented through statements of said solicitors that all the rugs sold by them were made by blind persons, when in fact only a minor portion of them were so made and it was very doubtful whether aforesaid advice or statements in order blanks and advertising booklets came to the attention of any substantial number of prospective purchasers; and
- (2) Represented also through use of their corporate name "Rugs of the Blind, Inc." that all of their rugs were thus made in their entirety, when in fact in the case of some, as above noted, only the fringe thereof was knotted by blind persons;

With tendency and capacity to mislead and deceive a substantial portion of the public with respect to said rugs, and thereby induce its purchase thereof, whereby substantial trade was unfairly diverted to them from their competitors:

Held, That such acts and practices were all to the prejudice of the public and respondents' competitors, and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce.

Before *Mr. William L. Pack*, hearing examiner.

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

Smith, Ristig & Smith, of Washington, D. C., for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated July 26, 1953, the initial decision in the instant matter of hearing examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 5, 1952, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of the Act. After the filing by respondents of their answer to the complaint, hearings were held, at which testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final consideration by the hearing examiner on the complaint, answer, testimony and other evidence, proposed findings and conclusions submitted by counsel, and oral argument of counsel; and the hearing examiner, having duly considered the matter, finds that this proceeding is in the interest of the public, and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Rugs of the Blind, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the city of Easton, Pennsylvania. Respondent Moses J. Miller is president of the corporation. He owns all of its capital stock, and formulates all of its policies and directs and controls all of its activities and practices.

While respondents Bernard M. Goodman and Frances Testa are officers of the corporation, they have no part in the actual operation of the business, nor in the formulating of its policies. A motion has been filed by these individuals seeking dismissal of the complaint as to them. It is concluded that the complaint should be dismissed as to these respondents in their individual capacities, but not in their capacities as officers of the corporation. The term "respondents," as used hereinafter, will therefore include the respondent corporation, respondent Moses J. Miller both in his individual capacity and as an officer of the corporation, and respondents Bernard M. Goodman and Frances Testa in their capacities as officers of the corporation.

PAR. 2. Respondents are engaged in the sale and distribution of rugs, causing their rugs, when sold, to be transported from their place

of business in the State of Pennsylvania to purchasers located in various other States of the United States. Respondents maintain a substantial course of trade in their rugs in commerce between and among various States of the United States.

PAR. 3. In the sale and distribution of their rugs, respondents are in substantial competition with other corporations and individuals engaged in the sale and distribution of rugs in commerce between and among various States of the United States.

PAR. 4. The rugs sold by respondents fall into two general categories: first, rugs which are made entirely by blind persons, these rugs being woven on hand looms operated by such persons. All of these rugs are made in the workshops of the Northampton County Branch of the Pennsylvania Association for the Blind; second, machine-made rugs manufactured by a rug mill in Easton, Pennsylvania. The only connection blind persons have with these rugs is that they knot or tie the fringes which are affixed to the rugs by the mill.

Some of this knotting and tying work is done in the workshops of the Northampton County Branch of the Pennsylvania Association for the Blind. Much of it, however, is done by blind persons in their own homes. The rug mill delivers the rugs to the homes of such workers, and later picks up the rugs after the fringes have been knotted. Respondents do no manufacturing, but purchase all of their rugs from the two sources named, the blind-made rugs from the Northampton County Branch of the Pennsylvania Association for the Blind, and the machine-made rugs from the rug mill.

The blind-made rugs, designated by respondents as "Colonial" rugs, represent from 20 percent to 25 percent of respondents' total sales volume. The remainder of the sales are of the machine-made rugs. Respondents' purchases of the blind-made rugs appear to have been of substantial benefit to the Northampton County Branch of the Pennsylvania Association for the Blind, and through this organization, to the blind. During the period from September 1949 to November 1952, respondents purchased 26,752 rugs from the Branch, paying therefor \$55,758. These purchases represented approximately 68 percent of the rug production of the institution. As a result of respondents' purchases, the Branch has been able to supply employment to an increased number of blind persons, 37 of such persons being now employed as against 14 prior to the time respondents began their purchases. Respondents pay for the rugs the same prices as those charged other wholesale purchasers, and in reselling the rugs respondents maintain the same retail prices as those charged by the Branch.

Findings

50 F. T. C.

Blind persons knotting the fringes on the machine-made rugs are compensated at the rate of 10 cents per rug. The average blind worker can knot some 4 or 5 rugs per hour.

PAR. 5. Sales of respondents' rugs are made through door-to-door solicitation by salesmen or solicitors. Respondents advertise for "District Distributors," and those persons adjudged by respondents to be suitable are given contracts covering certain specified territories. The district distributor then proceeds to organize a crew of salesmen who work the designated territory. Frequently the district distributor, before he is given a contract, is required to work as a salesman himself for a period of time in order to determine whether he is capable of producing enough business to warrant his being given a contract. When a salesman obtains an order for a rug, he collects from the customer a specified amount as a deposit, which he retains as his commission. The orders are turned over to the district distributor, who, at regular intervals, forwards them to respondents. The rugs are shipped by respondents to the customers by parcel post C. O. D. The district distributor receives a specified amount on each sale made in his territory, plus the customary salesman's commission on any orders which he may obtain personally.

Respondents, through the district distributors, supply each salesman with an identification card, order blanks, an advertising booklet, and a sample kit. The identification card, which is signed by the district distributor, states that the person whose name appears thereon "is authorized to accept orders for and collect deposits for products of Rugs of the Blind, Inc. only as specified on its official order blank." The order blank prominently displays the name of the corporate respondent, "Rugs of the Blind, Inc." It also carries in fairly heavy type the words "Rugs Woven by the Blind on Hand Looms," and in somewhat smaller type the words "Machine-made Rugs Knotted by Blind Workers." The advertising booklet, which is frequently shown to the prospective customer by the salesman, displays rather prominently the corporate name "Rugs of the Blind, Inc." On the first page are the words "Distributors of Rugs Woven by the Blind on Hand Looms, and of Chenille Rugs With Fringes Knotted by Blind Workers." The booklet also contains, in addition to pictures of the several rugs, pictures of blind workers weaving the Colonial, or blind-made, rugs, and knotting fringes on the machine-made rugs.

(A more recent edition of the booklet gives somewhat more definite information regarding the two classes of rugs. The first page of this booklet displays prominently the words "Rugs Woven by the Blind on Hand Looms—Machine-made Rugs Knotted by Blind Workers." On the third page there appears, under the caption "Colonial Rugs," the

following: "These rugs are hand woven by highly skilled blind personnel on hand looms * * *," and under the caption "Palace, Mayfair, Boyd and Roxy Rugs," the following: "These rugs are machine made and the fringes have been knotted by blind persons * * *." Under the pictures of the various rugs there appears, in rather small type, a statement as to the origin of the rug. Under the picture of the Colonial rug, the statement is, "This rug is hand woven entirely by the blind and carries a label of such identification," while under the pictures of the other rugs the statement is, "This rug is machine made and the fringes have been knotted by blind workers.")

The sample kit contains samples of the various rugs, both blind-made and machine-made, and a "Guarantee and Identification Certificate" reading in part as follows: "We certify that the Colonial Rugs are Handwoven on Handlooms by blind weavers * * *" and "We Further Certify that the Boyd, Mayfair, Palace, and Roxy rugs are made by sighted workers, and the fringes tied by blind workers * * *."

PAR. 6. The first issue raised by the complaint is whether solicitors selling respondents' rugs have represented to prospective purchasers that all of such rugs are made by blind persons. Some ten members of the public, practically all of them housewives, testified on this issue. While the testimony of the witnesses varies in detail, and while the rugs purchased by some of them were of the type which had in fact been made entirely by blind persons, the testimony establishes that in a substantial number of instances representations have been made by solicitors to the effect that all of respondents' rugs are made by the blind. These representations were, of course, unwarranted and misleading, as only a minor portion of the rugs are so made.

PAR. 7. The complaint also attacks the corporate name "Rugs of the Blind, Inc.," charging that the name is itself false and misleading. It seems clear that the name does constitute a representation that respondents' rugs are made by the blind. The representation is true with respect to the Colonial rugs, which are blind-made in their entirety, and if all of respondents' rugs were of that type the use of the corporate name would be unobjectionable. The name, however, is untrue and misleading as to all of the other rugs, because the only work the blind do on these rugs is to knot the fringes. The corporate name being thus partly true and partly false, the question of the appropriate remedy is a difficult one. Trade and corporate names are valuable business assets, and should not be prohibited absolutely if less drastic measures will suffice (*Jacobs Siegel Company v. F. T. C.*, 327 U. S. 608).

It is very doubtful that the statements appearing on respondents' order blank and in the advertising booklet indicating that some of the rugs are not made by the blind come to the attention of any substantial number of prospective purchasers. The most important and significant part of the salesman's equipment, the sample kit, is, from a practical viewpoint, virtually barren of any such information. True, the kit does contain a certificate to the effect that certain of the rugs are made by sighted persons, but, as in the case of the sales material referred to above, it is very doubtful that the certificate comes to the attention of the public. The samples of the rugs themselves, which are the important part of the sample kit, contain no disclosures whatever. The only information shown on the samples is simply the name of the rug, as "Colonial," "Mayfair," etc., together with the color. It is from the samples that the housewife buys, and the danger of confusion and deception could, for all practical purposes, be virtually eliminated if there appeared on each sample a clear and conspicuous statement as to the origin of the rug, as, for example, "Machine-made Rug—Fringes Knotted by Blind Workers."

It is concluded that in the circumstances here existing, an absolute prohibition against the use of the corporate name is unnecessary and would not be warranted; that reasonably adequate protection of the public and of respondents' competitors can be accomplished by the less drastic means outlined above.

PAR. 8. It is urged by respondents that the solicitors selling their rugs are not their agents or employees, and that respondents are therefore not responsible for any misrepresentations made by the solicitors to the public. In support of this contention, respondents point out that under the terms of the written contract entered into by them with the district distributors, such persons are "independent contractors," and that the district distributors employ their own solicitors; that respondents exercise no supervision or control over the solicitors with respect to hours of work or other details of their employment; and that no deductions are made by respondents from the commissions of solicitors or district distributors for income tax purposes or for unemployment compensation.

This contention is rejected as untenable. Respondents cannot be permitted to supply to solicitors all of the means used by them in making sales, including the use of respondents' corporate name, and to reap the benefit of the solicitors' efforts, and at the same time, escape all responsibility for the solicitors' misrepresentations.

PAR. 9. There is a preference on the part of a substantial portion of the public for purchasing products made by blind persons as distinguished from products not so made.

117

Order

PAR. 10. While the complaint referred to toilet lid covers as well as rugs, there is an almost complete absence of evidence with respect to such products. Apparently these products constitute no more than a negligible part of respondents' business. Certainly there is no substantial evidence in the record as to misrepresentations by solicitors with respect to such products, and the corporate name "Rugs of the Blind, Inc." would have no significance in connection with such products.

PAR. 11. The acts and practices of respondents, as described above, have the tendency and capacity to mislead and deceive a substantial portion of the public with respect to respondents' rugs, and the tendency and capacity to cause such portion of the public to purchase respondents' rugs as a result of the erroneous and mistaken belief so engendered. In consequence, substantial trade has been unfairly diverted to respondents from their competitors.

CONCLUSION

The acts and practices of the respondents, as hereinabove set forth, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Rugs of the Blind, Inc., a corporation, and its officers, and respondent Moses J. Miller, individually and as officer of said corporation, and respondents Bernard M. Goodman and Frances Testa, as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of rugs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing as having been made by blind persons any rug which has not in fact been so made.

2. Using the corporate name "Rugs of the Blind, Inc.," or any other corporate or trade name containing the word "Blind," in connection with any rug not made by blind persons: *Provided, however*, That in the case of a rug which, although not made by blind persons, has fringes which were knotted by such persons, such corporate or trade name may be used if there appears on the sample of such rug displayed to the public a clear and conspicuous statement as to the origin of such rug, as, for example, "Machine-made Rug—Fringes Knotted by Blind Workers."

Order

50 F. T. C.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondents Bernard M. Goodman and Frances Testa in their individual capacities.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of July 26, 1953].

Order

IN THE MATTER OF
SAFEWAY STORES, INC.

Docket 5990. Complaint, May 14, 1952—Dismissal order, July 27, 1953

Charge: Knowingly receiving lower prices from sellers of grocery products of like grade and quality than said sellers charged respondent's competitors, in violation of subsection (f) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. Edward S. Ragsdale, *Mr. Peter J. Dias*, and *Mr. Richard E. Ely* for the Commission.

Watson, Ess, Whittaker, Marshall & Enggas, of Kansas City, Mo., and *Orrick, Dahlquist, Harrington & Sutcliffe*, of San Francisco, Calif., for respondent.

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

This matter having come on to be heard by the Commission upon the hearing examiner's certification to the Commission, on May 19, 1953, of respondent's motion to dismiss, memorandum in support thereof, answer thereto by counsel supporting the complaint, and the entire record in this proceeding, for such action thereon as the Commission may deem appropriate, and supplemental answer to respondent's motion to dismiss filed by counsel supporting the complaint and supplemental memorandum filed by respondent; and

It appearing that subsequent to the hearing examiner's certification of this matter to the Commission, the Supreme Court rendered its decision in the case of *Automatic Canteen Company of America v. Federal Trade Commission*, C. C. H. Trade Reg., Rep., Par 67,503 (June 8, 1953) [346 U. S. 61; 49 F. T. C. 1763], in which it held in substance that proof of a violation of subsection (f) of Section 2 of the Clayton Act must include proof that the buyer had knowledge that the lower prices he received or induced were not within one of the seller's defenses, such as cost justification, and it further appearing that counsel supporting the complaint are of the opinion that the evidence presently available is insufficient to prove the degree of knowledge on the part of the respondent in this case which is required by the said Supreme Court decision; and

The Commission having duly considered all the pertinent factors and being of the opinion that, under the circumstances, no useful purpose would be served by continuing this proceeding, but that dismissal of the complaint should be without prejudice, such disposition of this proceeding making it unnecessary to rule upon respondent's