

Order

50 F. T. C.

IN THE MATTER OF
PROGRESS TAILORING COMPANY ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 3747. Order, Feb. 16, 1954

Order modifying—in harmony with the Commission's changed interpretation of the application of Sec. 5 of the Act to the use of such terms as "free" in advertising or other offers, as set out in *Walter J. Black, Inc.*, Docket 5571, Sept. 11, 1953, and the modified final decree dated Dec. 9, 1953, of the Court of Appeals for the Seventh Circuit in the instant matter—Commission's prior orders, dated July 20, 1943, 37 F. T. C. 277, prohibiting various practices, including use of the term "free" as there set out—

So as to require respondents, in connection with the offer, sale, and distribution of wearing apparel and other merchandise—in connection with which it advertised for the services of salesmen—to cease and desist from "using the term 'free' or any other term of similar import or meaning to designate, describe, or refer to wearing apparel or other items of merchandise which are furnished as compensation for services rendered, *unless in close connection therewith all the conditions, obligations, or other prerequisites to the receipt and retention of said wearing apparel or other items of merchandise are clearly and conspicuously set forth*".

Before *Mr. Randolph Preston* and *Mr. James A. Purcell*, hearing examiners.

Mr. R. P. Bellinger for the Commission.

Mayer, Meyer, Austrian & Platt, of Chicago, Ill., and *Hogan & Hartson*, of Washington, D. C., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents had violated the provisions of the Federal Trade Commission Act, and on July 20, 1943, issued an order to cease and desist against respondents Progress Tailoring Company, a corporation, trading under its own name and also as J. C. Field & Son; Stone-Field Corporation, a corporation; W. Z. Gibson, Inc., a corporation; Pioneer Tailoring Company, a corporation; and Certified Tailoring

662

Order

Company, a corporation; and their respective officers, representatives, agents and employees; and

The aforesaid respondents, having filed in the United States Court of Appeals for the Seventh Circuit their petition to review and set aside said order to cease and desist; and that Court having heard the matter on briefs and oral argument and having thereafter, on January 28, 1946, affirmed said order and on February 21, 1946, entered its final decree enforcing said order; and

Respondents Progress Tailoring Company, Stone-Field Corporation, W. Z. Gibson, Inc., and Pioneer Tailoring Company, respondent Certified Tailoring Company having been dissolved, and the Commission having, on December 4, 1953, jointly moved the Court to modify said final decree to accord with the change in the Commission's interpretation of the application of Section 5 of the Federal Trade Commission Act to the use of such terms as "free" in advertising or other offers to the public, as announced in its decision of the proceeding in Docket No. 5571, "In the Matter of Walter J. Black, Inc.," and the Court having, on December 9, 1953, entered an order modifying its final decree in the manner requested by the parties as aforesaid; and

The Commission being of the opinion that its order should be modified so as to accord with the aforesaid change in its interpretation of Section 5 of the Federal Trade Commission Act and to conform to the aforesaid order of the United States Court of Appeals for the Seventh Circuit:

It is ordered, therefore, That respondents Progress Tailoring Company, a corporation, trading under its own name and also as J. C. Field & Son; Stone-Field Corporation, a corporation; W. Z. Gibson, Inc., a corporation; and Pioneer Tailoring Company, a corporation; and their respective officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of wearing apparel and other similar items of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "free" or any other term of similar import or meaning to designate, describe, or refer to wearing apparel or other items of merchandise which are furnished as compensation for services rendered, unless in close connection therewith all of the conditions, obligations, or other prerequisites to the receipt and retention of said wearing apparel or other items of merchandise are clearly and conspicuously set forth.

2. Using the term "free" or any other term of similar import or meaning to describe or refer to linings, trimmings, or other portions

of garments which constitute a part of any garment, and the price of which is included in the price of the entire garment.

3. Using a pictorial representation of a building, in advertising or in any other manner, which inaccurately portrays or misrepresents the size or extent of respondents' business or the comparative volume of business transacted by the respondents.

4. Representing directly or by implication that respondents are selling their garments at manufacturers' prices or at prices which save the purchaser the cost or profit of the retailer or middleman.

5. Representing that respondents are wholesale tailors or that their garments are supplied to purchasers at wholesale prices or that respondents are engaged in any business other than the sale of garments at retail.

6. The use of reproductions of any fictitious affidavit in advertising material or in any other manner.

It is further ordered, That within sixty days after service upon them of this order, said respondents shall file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It appearing that respondent Certified Tailoring Company, a corporation, has been dissolved since issuance of the original order to cease and desist herein, *it is further ordered*, That the complaint herein be, and it hereby is, dismissed as to said former respondent.

Order

IN THE MATTER OF

METAL LATH MANUFACTURERS ASS'N ET AL.¹

Docket 5449. Complaint, June 28, 1946—Order, etc., opinion and dissenting opinion, Feb. 16, 1954

Charge: Concertedly maintaining delivered price zones for metal lath.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Fletcher G. Cohn, Mr. Paul R. Dixon, Mr. Robert F. Quinn and Mr. Paul H. LaRue for the Commission.

MacLeish, Spray, Price & Underwood, of Chicago, Ill., for Metal Lath Manufacturers Ass'n, United States Gypsum Co. and A. J. Tuscany.

White, Bradley, Arant, All & Rose, of Birmingham, Ala., for Alabama Metal Lath Co., Inc.

Evans, Chanson & Gentithes, of Warren, Ohio, for The Bostwick Steel Lath Co.

Johnston, Thompson, Raymond & Mayer, of Chicago, Ill., for Ceco Steel Products Corp.

Frost & Jacobs, of Cincinnati, Ohio, for Goldsmith Metal Lath Co.

¹ The Commission on August 30, 1949, issued an order granting in part and denying in part respondents' motion to dismiss the complaint, and denying request for oral argument, as follows:

This matter came on to be heard upon joint and several motion to dismiss the complaint herein filed on October 25, 1948, by respondents, answer thereto filed on November 10, 1948, by counsel in support of the complaint opposing the motion except as to respondent A. J. Tuscany, briefs of counsel in support of and in opposition to the motion, trial examiner's report and recommendations, on the motion and exceptions to said report and recommendations by certain of the respondents, including separate exceptions of respondent The Goldsmith Metal Lath Company, and by counsel in support of the complaint, and request of respondents for oral argument on the motion.

Respondents' motion was made after counsel in support of the complaint closed their case in chief and is based upon the contention that the evidence produced fails to make out a prima facie case under the complaint. The motion was referred to the trial examiner theretofore appointed by the Commission to receive evidence in the case, for report and recommendation. The trial examiner reported that the evidence of record fails to connect respondent Metal Lath Manufacturers Association and individual respondent Joseph A. Sampson with the conspiracy alleged and recommended that the motion be granted with respect to them and individual respondent A. J. Tuscany. With respect to the other respondents, the trial examiner found that there is sufficient evidence in the record to make out a prima facie case, and recommended that the motion to dismiss the complaint be denied.

Respondents, except Metal Lath Manufacturers Association, A. J. Tuscany, and Joseph A. Sampson, filed exceptions to substantially each point upon which the trial examiner's comments and recommendations were adverse to them. The bases for these exceptions are substantially the same as those on which the same points were presented in the motion and briefs. Respondent The Goldsmith Metal Lath Company filed separate exceptions to the trial examiner's finding and recommendation as to it, on the basis that the record contains no direct evidence of participation by The Goldsmith Metal Lath Company in the conspiracy alleged and that the conclusion of the trial examiner is based upon