

IN THE MATTER OF
MAY GOLDBERG, TRADING AS NORMAN COMPANY,
AND SAMUEL J. GOLDBERG

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

Docket 3812. Complaint, Jan. 28, 1942¹—Decision, Mar. 29, 1945

Where two individuals engaged in competitive interstate sale and distribution of lamps, shades and novelties; in selling and distributing their merchandise by devious methods—

- (a) Forwarded small orders of merchandise, charges for which usually amounted to less than \$25, to various department stores and other similar organizations, without having received orders therefor, selecting in many cases as prospective consignees stores which maintained a resident buying agent in New York City, and usually advised those concerned, when a shipment was questioned, that the order had been placed by the local resident buyer and was on file and, in the event the copy thereof was demanded either by the consignee or the buying agent, maintained that they had it while making use of various excuses and delays for their failure to produce it;
- (b) Usually refused to accept the return of such merchandise which consignees refused to accept, and threatened such consignees with legal action for failure to accept the same; and
- (c) In other cases, accepting return of the merchandise, made claims upon the consignee for transportation charges, breakage etc.;

With the result that purported consignees, in many cases, accepted and paid for such merchandise on the assumption that it had been properly ordered; in others paid therefor because of threats of legal action and to avoid expensive litigation on such small amounts; and in some instances—upon being advised that it had been refused by said individuals when returned and would be sold by the transporting agent for charges—accepted and paid therefor rather than continue the controversy; and

- (d) In cases where payment was refused by the consignee, in addition to sending various demands for payment, also sent letters purporting to be written by a collection agency, demanding payment, and represented that such accounts had been insured and were being turned over to their surety company for attention;

The facts being they did not so insure any of their accounts nor did they obtain the services of any bona fide collection agency to enforce collections, but, instead, purchased such purported letters from collection agencies in blank and filled in and mailed them without any further connection or service of such agencies; and while suit was threatened in many cases, in no instance, in so far as appeared, was suit ever filed to recover payment on such alleged purchases;

With capacity and tendency to mislead and deceive a substantial number of retail dealers, and to induce them to purchase their said products under the erroneous belief that such products had actually been ordered, or in order to avoid the expense and inconvenience of threatened litigation, whereby trade was diverted unfairly to them from competitors who did not engage in similar practices:

Held, That said acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of their competitors, and constituted unfair

¹ Amended.

methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. Karl Stecher for the Commission.

AMENDED 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 May Goldberg, trading under the name Norman Company, and Samuel J. Goldberg, 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, May Goldberg, is an individual, doing business under the trade name of Norman Company, with her principal place of business and general office at 169-173 Madison Avenue, or at 43 West 16th Street, in the city of New York, State of New York. Respondent, Samuel J. Goldberg, is the husband of May Goldberg and actively participated as a principal in the acts and practices hereinafter complained of and in the operation of the business hereinafter described. Respondents, trading under the name Norman Company, are now and have been for several years heretofore, engaged in the business of selling and distributing, among other items of merchandise, lamps, shades and novelties. Respondents have caused, and do cause, said products to be transported from their place of business in New York to the purchasers or purported purchasers thereof located at points in the States of the United States other than the State of New York.

PAR. 2. The respondents have been and are now engaged in substantial competition in the sale and distribution of said lamps, shades and novelties with corporations and with partnerships and with other individuals likewise engaged in the business of selling and distributing similar and other articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents have from time to time shipped such merchandise to various individuals, partnerships and corporations without having previously received orders therefor from said purported purchasers. In their correspondence with a purported purchaser respondents have contended that said merchandise was shipped in response to an order from the purported purchaser or its agent or representative. Respondents have in a large percentage of such instances refused to accept the return of said merchandise from the purported purchaser, insisting that the same should be kept and paid for by said purported purchaser. In many instances in which merchandise has been returned by the purported purchaser and accepted by the respondents, claims of various sorts covering transportation charges, breakage, etc., have been made against the purported purchaser.

In some instances, in their attempt to enforce payment for their merchandise or their claims, respondents have sent form letters of a collection agency to the purported purchasers. In other instances, respondents have threatened to turn the matter over to their surety company, which alleg-

edly guarantees all of their accounts, for collection by legal proceedings if necessary.

On their letterheads, directly under the name Norman Company, respondents have printed the word "manufacturers," thereby representing to the public that the lamps, shades and novelties which they offer for sale and sell are manufactured by them.

PAR. 4. In truth and in fact, respondents have no orders for the merchandise sent out to purported purchasers in the manner set forth herein. The purpose of respondents is, through means of threats, coercion and annoyance, to induce the purported purchaser to accept and pay for the merchandise rather than submit to the annoyance of the interminable correspondence and threats in which respondents indulge.

The form letters which appear to be sent to the purported purchasers by a collection agency are purchased by respondents in blank and the name inserted thereon by them. Said purported purchasers are thus induced to believe that the letters are sent to them by a bona fide collection agency, when in truth and in fact the senders of said letters are the respondents.

In truth and in fact, respondents have no intention of turning any of their claims over to a surety company for collection as threatened in their letters and no such surety company is employed by them.

In truth and in fact, respondents are not the manufacturers of the merchandise which they offer for sale and sell.

PAR. 5. The use by the respondents of the acts and practices hereinabove described has had, and now has, the capacity and tendency to, and does, mislead a substantial number of retail dealers and induce them to purchase respondents' products under the erroneous belief that such products have actually been ordered, or in order to avoid the expense and inconvenience of threatened litigation.

As a consequence thereof, trade has been and is unfairly diverted to respondents from their competitors who are also engaged in the sale and distribution of lamps, shades and novelties in commerce among and between the various States of the United States who do not engage in similar practices to induce the purchase of their products. As a result thereof, injury has been and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 June 8, 1939, issued, and subsequently served, its complaint in this proceeding upon the respondents, Norman Company, a corporation, and Samuel J. Goldberg, Mrs. May Goldberg, Edward Koplin, and Max Feder, individually, and as officers of said corporation, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint, testimony and other evidence in support of, and in opposition to, the

allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, it appearing to the Commission from said testimony and other evidence that the Norman Company was not a corporation but, instead, was a trade name used by May Goldberg and that the respondents, Edward Koplín and Max Feder, had no connection with said business, the Commission on October 14, 1941, issued its order upon the respondents, May Goldberg and Samuel J. Goldberg, to show cause why an amended complaint should not issue to conform to the proof and the testimony and other evidence heretofore introduced should not be considered to the same extent and effect as if taken under said amended complaint.

Thereafter, this matter having come on to be heard by the Commission upon said order to show cause and answer of the respondent, May Goldberg, the Commission on January 28, 1942, issued its order directing that an amended complaint issue and that the testimony and other evidence heretofore taken be considered in support thereof and in opposition thereto to the same extent and effect as if said proof had been offered and received under such amended complaint; and said amended complaint was duly issued and served upon said respondents, May Goldberg and Samuel Goldberg. Thereafter, the proceeding regularly came on for final hearing before the Commission on said amended complaint, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, supplemental report of the trial examiner, and brief and supplemental brief filed in support of the complaint (no briefs having been filed by respondents or oral argument requested); 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. Respondents, May Goldberg, and Samuel J. Goldberg, her husband, are individuals, engaged in the sale and distribution of merchandise under the trade name of Norman Company, which trade name is registered under the name of May Goldberg as sole proprietor. Said respondents maintain their principal place of business at 169-173 Madison Avenue in the city of New York and State of New York. The respondent, May Goldberg, was in charge of the finances of the business, and the respondent, Samuel J. Goldberg, was in charge of the operation of the business, taking care of the hiring of employees, soliciting business, and filling of orders. In the course and conduct of said business, when occasion arose, May Goldberg signed correspondence under the names "M. Goldberg" and "M. Feder."

PAR. 2. The respondents, May Goldberg and Samuel J. Goldberg, have, for several years last past, been engaged in the business of selling and distributing, among other items of merchandise, lamps, shades, and novelties, and cause such products, when sold, to be transported from their place of business in the State of New York to purchasers located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. The respondents have been, and are, engaged in substantial competition in the sale and distribution of said lamps, shades, and novel-

ties with other individuals and with partnerships and corporations engaged in the business of selling and distributing similar and other articles of merchandise in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of their aforesaid business, the respondents, May Goldberg and Samuel J. Goldberg, were engaged in the sale and distribution of their merchandise by devious methods consisting principally of forwarding small orders of merchandise to various department stores and other similar organizations without having received an order for such merchandise. In many cases, the respondents selected as prospective consignees of their shipments, department stores and other similar places of business that maintained a resident buying agent in the city of New York. When such merchandise was received by these consignees, in many cases the absence of a purchase order was overlooked or it was assumed that the purchase had been made by the resident buying agent in New York. In those cases where the shipment was questioned and request made of the respondents as to the authority under which the merchandise was shipped, such parties were usually advised that the order had been placed by the local resident buyer in New York and that the respondents had such order on file. In the event a copy of the order was demanded, either by the consignee or the resident buying agent, the respondents maintained that they had such order, but by means of various excuses and delays failed to produce such order for inspection. In those cases where the consignee refused to accept such shipments because of the absence of prior order and returned the merchandise to the respondents, the respondents usually refused to accept the return of the merchandise and entered into an interchange of correspondence threatening such consignee with suit or other legal action for failure to accept such shipments. In other cases, the respondents accepted return of the merchandise and made claims upon the consignee for transportation charges, breakage, etc.

The amount charged by the respondents for the merchandise shipped in this manner without order usually amounted to less than \$25. In many cases, the purported consignee accepted and paid for such merchandise under the assumption that it had been properly ordered. In other cases, such consignees paid for such merchandise because of threats of legal action on the part of the respondents and in order to avoid expensive litigation on such small amounts. In some instances, such consignees, upon being advised that shipment had been refused by respondents when returned and would be sold by the transporting agent for charges, accepted and paid for such shipments rather than continue further controversy as to the existence or nonexistence of an order for the merchandise. In those cases where payment was refused by the consignee, the respondents, in addition to sending various demands for payment, also forwarded letters purporting to be written by a collection agency, demanding payment, and also represented that such accounts had been insured and were being turned over to their surety company for attention. The respondents did not so insure any of their accounts nor did they obtain the services of any bona fide collection agency to enforce collection of their accounts, but, instead, such purported letters from collection agencies were purchased by the respondents in blank and filled in and mailed out by the respondents without any further connection or service of such collection agency. Although suit was threatened in many cases, the Commission finds no instance in which the respondents ever filed suit to recover payment on such alleged purchases.

PAR. 5. The use by said respondents of the aforesaid acts and practices has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial number of retail dealers and to induce them to purchase said respondents' products under the erroneous belief that such products have actually been ordered or in order to avoid the expense and inconvenience of threatened litigation. As a direct result thereof, trade has been diverted unfairly to the said respondents from their competitors who are also engaged in the sale and distribution of similar products in commerce among and between the various States of the United States and who do not engage in similar practices to induce the purchase of their products.

CONCLUSION

The aforesaid acts and practices of the respondents, May Goldberg and Samuel J. Goldberg, as herein found, are all to the prejudice and injury of the public and of said respondents' competitors and constitute unfair methods of competition in commerce and 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 amended complaint of the Commission, testimony and other evidence in support of the amended complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report and supplemental report of the trial examiner upon the evidence and exceptions filed thereto, and brief and supplemental brief filed in support of the complaint; and the Commission having made its findings as to the facts and its conclusion that said respondents, May Goldberg and Samuel J. Goldberg, individually and trading as Norman Company, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, May Goldberg, an individual, and Samuel J. Goldberg, an individual, trading under the name of Norman Company or any other trade name, and their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of lamps, shades, novelties, and other items of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Shipping or delivering their merchandise to department stores and other retailers without previous order or agreement to purchase, for the purpose of inducing the purchase of their said products through mistake.
2. The use of threats of legal action, demand letters purporting to be from the collection agencies, and other forms of coercion to induce a consignee to accept and pay for merchandise which had not been ordered or shipped under an agreement to purchase.
3. Representing that the accounts of the respondents are insured or that claims based upon refusal to accept merchandise not previously ordered will be turned over to a surety company for collection.
4. Refusing to accept return of merchandise shipped by respondents without bona fide order or previous agreement to purchase.

Order

40 F. T. C.

5. Making false claim for damages on merchandise returned by consignees to whom merchandise was shipped without order or other agreement to purchase.

It is further ordered, That the respondents, Samuel J. Goldberg and May Goldberg, 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.