

understandings, combinations and conspiracies therein referred to occurred more than 10 years ago under economic conditions which differed materially from those now prevailing; and

It further appearing that the record does not show that the rules, regulations and requirements designated in the amended complaint as "uniform standards of so-called fair commercial practices" and alleged to have been imposed or enforced upon all members of the furniture industry were distributed by any of the respondents after March 18, 1936, and does not clearly establish the extent to which said "standards" have been imposed or enforced upon the members of the industry since said date, or the extent to which the respondents' activities since 1936 have restricted or restrained interstate trade in furniture products or affected competition between and among the respondents or tended to create in the respondents a monopoly in the sale of furniture products; and

It further appearing that counsel in support of the complaint have in effect conceded that the allegations of the amended complaint with respect to the respondents' formulation, adoption and putting into operation of a so-called "Trade Relations Movement," one of the alleged purposes of which was to deprive employees of large industrial and commercial organizations of the opportunity of buying furniture and associated products from or through the facilities of their respective employees, have not been sustained by the greater weight of the evidence thereon; and

The Commission being of the opinion that in the circumstances the public interest will be better served by a dismissal of the amended complaint than by a continuation of the proceeding, it being understood, however, that this action does not constitute an adjudication of any of the issues involved or prejudice the right of the Commission to conduct a further investigation into the respondents' business practices and to take such further action as the Commission may consider warranted as the result of such investigation, or otherwise:

Accordingly, it is ordered, That the respondents' appeal from the ruling of the hearing examiner be, and it hereby is, granted.

It is further ordered, That the amended complaint in this proceeding be, and it hereby is, dismissed without prejudice to the right of the Commission to take such further action against the respondents at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. James A. Purcell*, trial examiner.

Mr. George W. Williams and *Mr. Rufus E. Wilson* for the Commission.

Davies, Richberg, Beebe, Landa & Richardson, of Washington, D. C., for National Retail Furniture Association, its officers and members of the Board of Directors.

Mr. Leo J. Heer, of Chicago, Ill., also represented National Retail Furniture Association.

Covington, Burling, Rublee, O'Brian & Shorb, of Washington, D. C., for The American Retail Federation, its officers and members of the Executive Committee and trustees.

Mr. Deneen A. Watson, of Chicago, Ill., for Illinois Federation of Retail Associations, its officers and members of the Board of Directors.

Miller, Daus & Schwenger, of Cleveland, Ohio, for Cleveland Retail Furniture Association, its officers, various members of the Executive Committee and members.

Halle, Haber, Berick & McNulty, of Cleveland, Ohio, also represented B. W. Marks and Mayer Marks Co.

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for Trade Relations Council of Western Pennsylvania and Retail Merchants Association of Pittsburgh, its officers, various members of the Board of Directors and members.

Mr. Herbert C. Moore and *Mr. William C. Rogers*, of Baltimore, Md., for Retail Furniture Association of Baltimore, Inc., its officers and members of the Board of Directors.

Willard, Allen & Mulkern and *Russell, Plumer & Rutherford*, of Boston, Mass., for The Retail Trade Board of the Boston Chamber of Commerce, its officers, members of the "Governing Council", and members.

Hutchins & Wheeler, of Boston, Mass., also represented George Hansen and Chandler & Co., Inc.

Hemenway & Barnes, of Boston, Mass., also represented Jordon Marsh Co. and C. F. Hovey Co.

Choate, Hall & Stewart, of Boston, Mass., also represented R. H. White Corp.

Weil, Gotschal & Manges, of New York City, for New York Council on Retail Trade Diversion, Inc., various officers and members of the Executive Committee.

Gould & Wilkie, of New York City, for J. E. Davidson.

Marlow & Lincoln, of New York City, for John Wood.

Zelby & Burstein, of New York City, for Associated Furniture Dealers of New York, Inc., its officers and members of the Board of Governors.

Mr. Edwin S. Malmed, of Philadelphia, Pa., for Philadelphia Trade Relations Council, its officers and members of the Board of Directors.

Beaumont, Smith & Harris, of Detroit, Mich., for Retail Merchants Association of Detroit, its officers, members of the Board of Directors and members.

Mr. L. E. Oliphant, Jr., and *Mr. J. A. Lind*, of Chicago, Ill., also represented R. Hunsinger and Montgomery Ward & Co.

Goulston & Storrs, of Boston, Mass., also represented Sears, Roe-

buck & Co., Scott Furriers, Inc., Jays, Inc., Kay Jewelry Co., Lehb-
burger & Asher, Inc., Liquor Mart, Inc. and Raymond's, Inc.

Morrissey & Conley, of Providence, R. I., for Retail Trade Board of
Providence Chamber of Commerce, its officers, members of the Board
of Directors and members.

Swan, Keeney & Smith, of Providence, R. I., for Jesse L. Johnson.

MIL-KAY ORANGE CORP. OF AMERICA. Complaint, June 26, 1950.
Order, December 10, 1951. (Docket 5788.)

CHARGE: Advertising falsely or misleadingly and assuming or
using misleading trade or corporate name as to composition of prod-
uct and furnishing means and instrumentalities of misrepresentation
or deception through supplying false and misleading display cards;
in connection with the sale of a beverage concentrate, an acid solution
and a special color designated respectively as "Mil-K Fruit Base",
"Citric Acid Solution" and "Special Mil-K Botl Color", which it sells
and distributes to bottling plants for use in the preparation of a
carbonated beverage designated as "Mil-Kay".

COMPLAINT: Pursuant to the provisions of the Federal Trade Com-
mission Act and by virtue of the authority vested in it by said Act,
the Federal Trade Commission having reason to believe that Mil-Kay
Orange Corp. of America, a corporation, hereinafter referred to as
respondent, has 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. Mil-Kay Orange Corp. of America is a corporation
organized and existing under and by virtue of the laws of the State
of Missouri with its principal place of business located at 3012 Locust
Street, St. Louis, Mo.

PAR. 2. Respondent is now and for more than one year last past
has been engaged in the sale and distribution of a beverage concen-
trate, an acid solution and a special color designated respectively as
"Mil-K Fruit Base," "Citric Acid Solution" and "Special Mil-K
Botl Color," which it sells and distributes to bottling plants located
in various States of the United States for use in connection with the
preparation of a carbonated beverage designated as "Mil-Kay."

Respondent causes its said products when sold to be transported
from its place of business in Missouri to purchasers thereof in various
other States. When the beverage drink "Mil-Kay" has been pre-
pared by the use of respondent's said products, it is frequently shipped
by bottlers to retailers located in States other than the State in which
such shipments originated.

Respondent maintains and has maintained a course of trade in its

products between and among the various States of the United States and its volume of business has been substantial.

PAR. 3. In the course and conduct of its business respondent has disseminated and has caused the dissemination of various advertisements concerning the beverage "Mil-Kay" made by the use of its products by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and caused the dissemination of advertisements concerning said beverage "Mil-Kay" by various means for the purpose of inducing and which would likely induce, directly or indirectly, the purchase of said beverage "Mil-Kay" in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the advertisements disseminated and caused to be disseminated as hereinabove set forth are the following counter display cards used by bottlers and retailers in advertising and promoting the sale of "Mil-Kay" as follows:

Drink MIL-KAY
It is Good For You

These words are printed upon a picturization of a whole orange.

A picture of a bottle of "Mil-Kay" bearing the following lettering:

MIL K BOTL
CONTAINS VITAMIN B,
REFRESHING
JUST SAY
MIL-KAY
THE VITAMIN B,
DRINK
INVIGORATING
MIL-KAY
SOLD IN BOTTLES ONLY

The picture of the bottle with its inscriptions is printed upon a picturization of an exploding orange.

PAR. 4. By means of the display cards bearing the picturizations thereon set out in Paragraph Three herein, respondent represented and placed in the hands of bottlers and retailers means and instrumentalities by and through which they may and have represented that the principal and characteristic ingredient of the beverage "Mil-Kay" is orange juice.

PAR. 5. The aforesaid statements and picturizations are misleading in material respects and constitute "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "Mil-Kay," while simulating the odor, appearance, and taste of a product composed principally of orange juice, derives its odor, appearance, and taste chiefly from imitation ingredients and is in fact an imitation orange product.

PAR. 6. The use by the respondent of the aforesaid false advertisements had the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that the picturizations contained therein are true and caused a portion of the purchasing public to purchase substantial quantities of the product "Mil-Kay" because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent, 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.

ORDER closing case without prejudice follows:

The respondent in this proceeding having executed and tendered to the Commission a proposed stipulation of facts and agreement to cease and desist from the acts and practices alleged in the complaint to have been in violation of the Federal Trade Commission Act; and

The hearing examiner having recommended that said stipulation and agreement to cease and desist be accepted and that the case be closed without prejudice to the right of the Commission to reopen the same and resume trial thereof if the respondent again engages in said acts or practices; and

It appearing to the Commission that the complaint charges the respondent with having falsely represented, through the use of certain advertising display cards, that a beverage designated as "Mil-Kay, the Vitamin B₁ Drink," prepared from ingredients sold by the respondent, is composed principally of orange juice; and

It further appearing that prior to the issuance of the complaint the respondent abandoned the use of said advertising display cards, and that it has now deleted from its corporate name the word "Orange," thus negating any implication that may have been inherent in the use of said corporate name that the beverage "Mil-Kay, the Vitamin B₁ Drink," is composed principally of orange juice; and

The Commission being of the opinion that in the circumstances the public interest does not require a continuation of this proceeding at this time:

It is ordered, That the proposed stipulation and agreement to cease and desist executed by the respondent on September 29, 1950, be, and it hereby is, accepted.

It is further ordered, That the case growing out of the complaint herein be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondent at any time in the future as may be warranted by the then existing circumstances.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. John L. York and *Mr. Jesse D. Kash* for the Commission.

Freedman & Levy, of Washington, D. C., for respondent.

BOND STORES, INC. Complaint, September 2, 1949. Order, January 10, 1952. (Docket 5697.)

CHARGE: Advertising falsely or misleadingly as to composition, manufacture or preparation, prices, source or origin and value of products, using misleading product name or title as to composition and source or origin of product and misrepresenting prices; in connection with the sale of men's, women's and children's clothing.

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 Bond Stores, Inc., a corporation, hereinafter referred to as respondent, has 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, Bond Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business at 380 Fifth Avenue, New York, N. Y.

PAR. 2. Respondent is now and for several years last past has been engaged in the retail sale of men's, women's and children's clothing, some of which clothing is and has been manufactured by respondent in factories owned and operated by it in New Brunswick, N. J., Rochester, N. Y., Buffalo, N. Y., Glen Falls, N. Y., and Meridian, Miss. Other clothing sold by respondent at retail is purchased by it from other manufacturers.

Respondent ships and has shipped the clothing manufactured by it and purchased by it from other manufacturers from its factories and from factories of other manufacturers from which respondent buys and has bought clothing to 68 retail stores owned and operated by it, which retail stores are located throughout the various States of the United States and in the District of Columbia. In many instances the retail stores to which such clothing is shipped by respondent are located in States other than the State in which such shipments have or had their origin.

Respondent's retail stores are engaged in the sale of clothing as above described and the shipment of certain thereof in commerce, as "commerce" is defined by the Federal Trade Commission Act, to purchasers located in States other than that in which such shipments have or had their origin, and to customers residing within the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said clothing in commerce among and between the various States of the United States and in the District of Columbia.

