Fashion Originators' Guild of America v. Federal Trade Commission

312 U.S. 457 (1941)

Mr. Justice BLACK delivered the opinion of the Court.

The Circuit Court of Appeals . . . affirmed a Federal Trade Commission decree ordering petitioners to cease and desist from certain practices found to have been done in combination and to constitute 'unfair methods of competition' tending to monopoly. Determination of the correctness of the decision below requires consideration of the Sherman, Clayton, and Federal Trade Commission Acts.

Some of the members of the combination design, manufacture, sell and distribute women's garments—chiefly dresses. Others are manufacturers, converters or dyers of textiles from which these garments are made. Fashion Originators' Guild of America (FOGA), an organization controlled by these groups, is the instrument through which petitioners work to accomplish the purposes condemned by the Commission.

The garment manufacturers claim to be creators of original and distinctive designs of fashionable clothes for women, and the textile manufacturers claim to be creators of similar original fabric designs. After these designs enter the channels of trade, other manufacturers systematically make and sell copies of them, the copies usually selling at prices lower than the garments copied.

Petitioners call this practice of copying unethical and immoral and give it the name of 'style piracy.' And although they admit that their 'original creations' are neither copyrighted nor patented, and indeed assert that existing legislation affords them no protection against copyists, they nevertheless urge that sale of copied designs constitutes an unfair trade practice and a tortious invasion of their rights. Because of these alleged wrongs, petitioners, while continuing to compete with one another in many respects, combined among themselves to combat and, if possible, destroy all competition from the sale of garments which are copies of their 'original creations.' They admit that

to destroy such competition they have in combination purposely boycotted and declined to sell their products to retailers who follow a policy of selling garments copied by other manufacturers from designs put out by Guild members. As a result of their efforts, approximately 12,000 retailers throughout the country have signed agreements to 'cooperate' with the Guild's boycott program, but more than half of these signed the agreements only because constrained by threats that Guild members would not sell to retailers who failed to yield to their demands—threats that have been carried out by the Guild practice of placing on red cards the names of noncooperators (to whom no sales are to be made), placing on white cards the names of cooperators (to whom sales are to be made), and then distributing both sets of cards to the manufacturers.

The one hundred and seventy-six manufacturers of women's garments who are members of the Guild occupy a commanding position in their line of business. In 1936, they sold in the United States more than 38% of all women's garments wholesaling at $6.75 and up, and more than 60% of those at $10.75 and above. The power of the combination is great; competition and the demand of the consuming public make it necessary for most retail dealers to stock some of the products of these manufacturers. And the power of the combination is made even greater by reason of the affiliation of some members of the National Federation of Textiles, Inc.—that being an organization composed of about one hundred textile manufacturers, converters, dyers, and printers of silk and rayon used in making women's garments. Those members of the Federation who are affiliated with the Guild have agreed to sell their products only to those garment manufacturers who have in turn agreed to sell only to cooperating retailers.

The Guild maintains a Design Registration Bureau for garments, and the Textile Federation maintains a similar Bureau for textiles. The Guild employs 'shoppers' to visit the stores of both cooperating and non-cooperating retailers, 'for the purpose of examining their stocks, to determine and report as to whether they contain copies of registered designs.' An elaborate system of trial and appellate tribunals exists, for the determination of whether a given garment is in fact a copy of a Guild member's design. In order to assure the success of its plan of registration and restraint, and to ascertain whether Guild regulations are being violated, the Guild audits its members books. And if violations of Guild requirements are discovered, as, for example, sales to red-carded retailers, the violators are subject to heavy fines.[3]

In addition to the elements of the agreement set out above, all of which relate more or less closely to competition by so-called style copyists, the Guild has undertaken to do many things apparently independent of and distinct from the fight against copying. Among them are the following: the combination prohibits its members from participating in retail advertising; regulates the discount they may allow; prohibits their selling at retail; cooperates with local guilds in regulating days upon which special sales shall be held; prohibits its members from selling women's garments to persons who conduct businesses in residences, residential quarters, hotels or apartment houses; and denies the benefits of membership to retailers who participate with dress manufacturers in promoting fashion shows unless the merchandise used is actually purchased and delivered.

If the purpose and practice of the combination . . . runs counter to the public policy declared in the Sherman and Clayton Acts, the Federal Trade Commission has the power to suppress it as an unfair method of competition. From its findings the Commission concluded that the petitioners, 'pursuant to understandings, arrangements, agreements, combinations and conspiracies entered into jointly and severally', had prevented sales in interstate commerce, had 'substantially lessened, hindered

[3] In one instance a fine of $1,500 was imposed, and the Guild notified its membership that a fine of $5,000 would be assessed in case of future violation.

and suppressed' competition. . . . We hold that the Commission, upon adequate and unchallenged findings, correctly concluded that this practice constituted an unfair method of competition.

. . . [T]he findings of the Commission bring petitioners' combination in its entirety well within the inhibition of the policies declared by the Sherman Act itself. Section 1 of that Act makes illegal every contract, combination or conspiracy in restraint of trade or commerce among the several states; Section 2 makes illegal every combination or conspiracy which monopolizes or attempts to monopolize any part of that trade or commerce. Under the Sherman Act competition, not combination, should be the law of trade. . . . And among the many respects in which the Guild's plan runs contrary to the policy of the Sherman Act are these: it narrows the outlets to which garment and textile manufacturers can sell and the sources from which retailers can buy . . .; subjects all retailers and manufacturers who decline to comply with the Guild's program to an organized boycott, *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U.S. 600, 609-611 (1914); takes away the freedom of action of members by requiring each to reveal to the Guild the intimate details of their individual affairs . . .; and has both as its necessary tendency and as its purpose and effect the direct suppression of competition from the sale of unregistered textiles and copied designs. . . . In addition to all this, the combination is in reality an extra-governmental agency, which prescribes rules for the regulation and restraint of interstate commerce, and provides extra-judicial tribunals for determination and punishment of violations. . . .

Nor is it determinative in considering the policy of the Sherman Act that petitioners may not yet have achieved a complete monopoly. For 'it is sufficient if it really tends to that end, and to deprive the public of the advantages which flow from free competition.' *United States v. E. C. Knight Co.*, 156 U.S. 1, 16 (1895). . . . It was, in fact, one of the hopes of those who sponsored the Federal Trade Commission Act that its effect might be prophylactic and that through it attempts to bring about complete monopolization of an industry might be stopped in their incipiency.

Petitioners, however, argue that the combination cannot be contrary to the policy of the Sherman and Clayton Acts, since the Federal Trade Commission did not find that the combination fixed or regulated prices, parceled out or limited production, or brought about a deterioration in quality. But action falling into these three categories does not exhaust the types of conduct banned by the Sherman and Clayton Acts. And as previously pointed out, it was the object of the Federal Trade Commission Act to reach not merely in their fruition but also in their incipiency combinations which could lead to these and other trade restraints and practices deemed undesirable. In this case, the Commission found that the combination exercised sufficient control and power in the women's garments and textile businesses 'to exclude from the industry those manufacturers and distributors who do not conform to the rules and regulations of said respondents, and thus tend to create in themselves a monopoly in the said industries.' While a conspiracy to fix prices is illegal, an intent to increase prices is not an ever-present essential of conduct amounting to a violation of the policy of the Sherman and Clayton Acts; a monopoly contrary to their policies can exist even though a combination may temporarily or even permanently reduce the price of the articles manufactured or sold. For as this Court has said, 'Trade or commerce under those circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class and the absorption of control over one commodity by an all powerful combination of capital.' *United States v. Trans-Missouri Freight Association*, 166 U.S. 290, 323 (1897).

But petitioners further argue that their boycott and restraint of interstate trade is not within the ban of the policies of the Sherman and Clayton Acts because 'the practices of FOGA were

reasonable and necessary to protect the manufacturer, laborer, retailer and consumer against the devastating evils growing from the pirating of original designs and had in fact benefited all four.' The Commission declined to hear much of the evidence that petitioners desired to offer on this subject.

As we have pointed out, however, the aim of petitioners' combination was the intentional destruction of one type of manufacture and sale which competed with Guild members. The purpose and object of this combination, its potential power, its tendency to monopoly, the coercion it could and did practice upon a rival method of competition, all brought it within the policy of the prohibition declared by the Sherman and Clayton Acts. . . . Under these circumstances it was not error to refuse to hear the evidence offered, for the reasonableness of the methods pursued by the combination to accomplish its unlawful object is no more material than would be the reasonableness of the prices fixed by unlawful combination. . . . Nor can the unlawful combination be justified upon the argument that systematic copying of dress designs is itself tortious, or should now be declared so by us. . . . The decision below is accordingly. *Affirmed.*