MILLINERY CREATOR'S GUILD, INC. (FORMERLY MILLINERY QUALITY GUILD, INC.), ET AL. *v.* FEDERAL TRADE COMMISSION.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 251. Argued February 7, 10, 1941.—Decided March 3, 1941.

Decided upon the authority of *Fashion Originators' Guild of America, Inc.* v. *Federal Trade Commission, ante,* p. 457. P. 472.
109 F. 2d 175, affirmed.

CERTIORARI, 311 U. S. 625, to review the affirmance by the court below of a cease and desist order of the Federal Trade Commission.

Mr. Lowell M. Birrell, with whom *Mr. Charles A. Van Patten* was on the brief, for petitioners.

It is not the plan of the Guild, but "design piracy" itself, which is unfair competition. *International News Service* v. *Associated Press,* 248 U. S. 215; *Wm. Filene's Sons Co.* v. *Fashion Originators' Guild,* 90 F. 2d 556; Callman, Style & Design Piracy Journal of U. S. Patent Office Soc., Aug. 1940, Vol. XXII, pp. 557, 580, 583; XX Boston Law Rev. 365, reprinted in N. Y. Law Journal of May 4 and 6, 1940; *Dutton & Co.* v. *Cupples,* 117 App. Div. 172; *Wolfenstein* v. *Fashion Originators' Guild,* 244 App. Div. 656. See also *National Tel. News* v. *Western Union,* 119 F. 294; *Associated Press* v. *KVOS, Inc.,* 80 F. 2d 575, 299 U. S. 269; *Pittsburgh Athletic Co.* v. *K. Q. V.,* 24 F. Supp. 490; *Fanotopia, Ltd.* v. *Bradley,* 171 F. 951; *Twentieth Century Sporting Club* v. *Transradio Press Service,* 165 Misc. 71; and *Fisher* v. *Star Co.,* 231 N. Y. 414.

The Federal Trade Commission Act simply declares unlawful, unfair methods of competition. As the sole purpose of the plan of the Guild is to combat a practice

which the Commission itself has condemned as unfair and which was also condemned as unfair in some seventeen codes under N. R. A., it is difficult to see how the plan could amount to a violation of the Federal Trade Commission Act.

The sole reason assigned by the court below was that the plan was said to violate the Sherman Act. Virtually any contract is in some respect a restraint of trade, *Board of Trade* v. *U. S.*, 246 U. S. 231, 238, and yet not all agreements between two or more parties are within the prohibition of the Sherman Act. See *Apex Co.* v. *Leader*, 310 U. S. 469. A proper analysis of the question is, therefore, this: Does the plan present any of the evils which the Sherman Act was designed to prevent? The answer is clearly, no.

The plan does not contemplate price-fixing. The mere hope for fairer price levels through voluntary regulation does not render the regulation unlawful; and this Court has likewise encouraged business men to "clean house" without recourse to the courts. *Sugar Institute* v. *United States*, 297 U. S. 553, 597–598; *United States* v. *Socony Vacuum Oil Co.*, 310 U. S. 150, 215; *Appalachian Coals* v. *United States*, 288 U. S. 344; *Anderson* v. *United States*, 171 U. S. 604; *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238; *Cement Mfrs. Protective Assn.* v. *United States*, 268 U. S. 588; *Maple Flooring Assn.* v. *United States*, 268 U. S. 563; *National Assn. of Window Glass Mfrs.* v. *United States*, 263 U. S. 403. *Wolfenstein* v. *Fashion Originators' Guild*, 244 App. Div. 656. Nor is any other factor of illegal restraint present in this situation.

Finally, the plan shows no likelihood of resulting in deterioration of quality. In fact, quite the reverse may be expected. Johnston & Fitch, N. R. A. Work Materials Div. (1936) Bulletin No. 52, pp. 199–200, and Worthy,

N. R. A. Work Materials Div. (1936) Bulletin No. 53. Nystrom, Fashion Merchandising, p. 223.

The plan is not monopolistic in character. There is no attempt to obtain the exclusive right or power to sell millinery in any market or part of a market. There is no attempt to concentrate the millinery industry or any part of it in the hands of a few. Everyone, whether a member of the Guild or not, may obtain the protection it affords. Anyone who can design a hat may compete for the common prize; and they do compete vigorously. All that the Guild asks is that they compete by their own skill and organization rather than by merely appropriating the skill and organization of others. XX Boston Law Rev. 365.

The record shows no tendency to crowd anyone out of the industry. Our clients merely attempt to see to it that their own designs, and those of firms registering with them, be not filched and thereby ruined and that their competitors enjoy no unfair and unearned advantage.

Solicitor General Biddle, with whom *Assistant Attorney General Arnold* and *Messrs. Charles H. Weston* and *W. T. Kelley* were on the brief, for respondent.

MR. JUSTICE BLACK delivered the opinion of the Court.

This case presents virtually the same issues as *Fashion Originators' Guild of America* v. *Federal Trade Comm'n, ante,* p. 457. Here, as in that case, the Circuit Court of Appeals affirmed a Federal Trade Commission decree ordering the 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.[1]

[1] 109 F. 2d 175.

The members of the Guild involved in this case are designers and manufacturers of women's hats. Their Guild operates a plan modelled after that of the Fashion Originators' Guild of America, Inc.

It was stipulated by the parties that "The capacity, tendency, purpose, and result of the plan . . . and the acts and practices performed thereunder . . . have been, and now are, to restrain commerce by eliminating manufacturers of stylish hats . . . as to the outlets of their products and by limiting the retail dealers . . . as to their source of supply, and to deprive the public of the benefits, if any, of competition as to price or otherwise among retailers of stylish hats in this respect . . ." Pursuant to the evidence and to the stipulation containing this statement, the Commission found that the effect of the plan was "unduly to hinder competition and to create monopoly in the sale of women's hats in interstate commerce."

The respects in which the plan of the Millinery Creator's Guild differs from that of the Fashion Originators' Guild are not material, and need not be set out in detail. Nor need the findings of the Commission be enumerated here. The Commission did find that the Millinery Creator's Guild had tended to hinder competition and create monopoly "By depriving the public of the benefits of normal price competition among retailers of stylish hats for women," a finding not made in the other case, but the presence or absence of such a finding is not determinative here. On the authority of *Fashion Originators' Guild of America* v. *Federal Trade Comm'n,* the decision below is

Affirmed.