FEDERAL TRADE COMMISSION

v.

SOLOMON M. HEXTER, KAUFMAN W. HEXTER, TOBIAS FELDER, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF S. M. HEXTER & CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 97.—September 12, 1919.

SYLLABUS.

Where a concern engaged in the manufacture and sale of a cotton fabric, the trade-mark of which included the word "Sol," but not the word "Satin," marketed and extensively advertised the same as "Sol Satin," without any other descriptive words indicating the nature of the fabric or the raw materials of which it was made, with a tendency thereby to mislead the public into the belief that the fabric in question was made either wholly or partly of silk:

Held, That such labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT:

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Solomon M. Hexter, Kaufman W. Hexter, Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondents, Solomon M. Hexter, Kaufman W. Hexter, and Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., have

their principal office and place of business located at the city of Cleveland, State of Ohio, now and for more than two years last past engaged in the manufacture and sale of a cotton fabric among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business the respondents purchase their fabric in England, and cause the same to be transported to the city of Cleveland, in the State of Ohio, where the same is sold and shipped to dealers in different States and Territories of the United States and the District of Columbia, for resale to the public; and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said fabric between and among the various States and Territories of the United States and the District of Columbia, and more particularly from other States and Territories of the United States, the District of Columbia, and foreign countries to and through the city of Cleveland, State of Ohio, and from there to and through other States and Territories of the United States, and the District of Columbia.

PAR. 3. That the respondents, within the last year, with the purpose, intent, and effect of stifling and suppressing competition in interstate commerce in the sale of cotton fabrics, have adopted the trade name of "Sol Satin," and have advertised, and are now advertising, and holding out to the public, its fabric as such; which simulation is designed and calculated to, and does, deceive and mislead the public and cause purchasers to believe that respondents' fabric is composed of silk.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, in which it is alleged that it had reason to believe that the above-named respondents, Solomon M. Hexter, Kaufman W. Hexter, and Tobias Felder, have been and now are, using unfair methods of competition in inter-

state commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect, and respondents having entered their appearance by Edward D. Brown, Esq., their attorney, duly authorized and empowered to act in the premises, and having filed their answer admitting certain allegations therein contained and denying others, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony and shall forthwith thereupon make its report stating its findings as to the facts, its conclusion, and its order disposing of this proceeding without the introduction of testimony or argument in support of the same, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion, as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents, Solomon M. Hexter, Kaufman W. Hexter, and Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., have their principal office and place of business located at the city of Cleveland, State of Ohio, now and for more than two years last past engaged in the manufacture and sale of a cotton fabric among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business the respondents purchase their fabric in England and cause the same to be transported to the city of Cleveland, in the State of Ohio, where the same is sold and shipped to dealers in different States and Territories of the United States and the District of Columbia for resale to the public, and that

there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said fabric between and among the various States and Territories of the United States and the District of Columbia, and more particularly from other States and Territories of the United States, the District of Columbia, and foreign countries to and through the city of Cleveland, State of Ohio, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That in connection with the sale of the aforesaid cotton fabric the respondents have adopted and for a period of more than three years last past have used the trade name of "Sol Satin" as the name by which said fabric has been known and extensively advertised and sold in interstate commerce; that in the course of such advertising the respondents on June 22, 1915, registered in the United States Patent Office the trade-mark by which their said fabric has been and is known, which trade-mark consists of the fanciful word "Sol" appearing on a disk having radiant lines extending therefrom and representing the sun, below which appears the word "Satin," the latter word, however, being expressly disclaimed in the application, which trade-mark and the trade name "Sol Satin" without any other descriptive words indicating the nature of the fabric or the raw materials out of which said fabric is made have been extensively used in advertisements appearing in newspapers and magazines, on silk labels inserted in garments lined with said fabric, and on the back of the said fabric itself, and in other ways designed to bring said fabric to the attention of the purchasing public.

PAR. 4. That the word "satin," both in technical and popular usage, has a precise and exact meaning and is only properly used as the name of a fabric made either wholly or partly of silk and woven in a certain peculiar manner so as to impart a high luster to the surface of the fabric, though the word "satin," in the technology of the manufacturer, is sometimes used also to designate the kind of weave itself.

PAR. 5. That the word "satin" or "sateen," both in technical and popular usage, has a precise and exact meaning and is properly used as the name of a fabric of cotton in

satin weave and somewhat resembling satin; that the best grades of "satine" or "sateen" are also technically and popularly known as venetian cloth, to which latter class of fabrics the fabric of the respondents marketed under the name of "Sol Satin" properly belongs.

PAR. 6. That the use of the word "satin" in the aforesaid trade name and trade-mark of the respondents tends to deceive and mislead the public into the belief that the said fabric so sold by the respondents under the said trade name and trade-mark of "Sol Satin" was and is made either wholly or partly of silk.

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, Solomon M. Hexter, Kaufman W. Hexter, Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., having entered their appearance by Edward D. Brown, Esq., their attorney, duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence and in lieu of testimony in this case and proceed forthwith to enter its report stating its findings as to the facts, its conclusion, and its order without the introduction of testimony or argument in support of the same, and waiving therein any and all right to the introduction of such testimony, and the Federal Trade Commission having made

and entered its report stating its findings as to the facts and its conclusion, that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the said respondents cease and desist from advertising, labeling, holding out, and selling as satin the fabric heretofore advertised and sold by them under the trade name of "Sol Satin," and from using the word "satin" in any way to designate or describe said fabric or any fabric like or similar thereto.

FEDERAL TRADE COMMISSION

v.