FEDERAL TRADE COMMISSION

v.

CLARKE & HOLSAPPLE MANUFACTURING CO.

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

Docket 422.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Men's wool shirts," "Men's summer merino shirts," although such goods were composed partly of cotton;

Held, That such branding, 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 the Clarke & Holsapple Manufacturing Co., hereinafter referred to as the respondent, has been and is 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 respondent, the Clarke & Holsapple Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Cohoes, in said State, now and for more than two years last past engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia in direct

competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business manufactures such underwear so sold by it at its factory in the city of Cohoes, State of New York, and purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Cohoes, where they are manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Cohoes, State of New York, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "Men's wool shirts," "Men's summer merino shirts"; that such advertisements, brands and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, Clarke & Holsapple Manufacturing Co., has been for more than one year last past 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 that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, 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 respondent 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 conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Clarke & Holsapple Manufacturing Co., is a New York corporation, with its principal place of business in the city of Cohoes, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Clarke & Holsapple Manufacturing Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Men's wool shirts," "Men's summer merino shirts."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such undearwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, Clarke & Holsap-

ple Manufacturing Co., having entered their appearance by J. S. Carter, 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 they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case, and in lieu of testimony, and proceed forthwith upon the same to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, 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 respondent, Clarke & Holsapple Manufacturing Co., their officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Wool shirts" and "Merino shirts," or any similar descriptive brands or labels, on underwear, socks, or other knit goods composed partly of wool, except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool, worsted, merino, and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

ROOT MANUFACTURING CO.