HIMES UNDERWEAR CO.

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

Docket 470.—February 5, 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—

(*a*) branded, labeled, advertised, and sold certain knit goods as "Fine natural wool," although such goods were composed partly of cotton; and

(*b*) applied the label and brand "Men's fine Jaeger drawers" to certain of its underwear, and so advertised and sold the same to the purchasing public; notwithstanding the fact that "Dr. Jaeger's health underwear" was then a well-known brand of underwear, already identified in the public mind with a particular manufacturer, thereby misleading the purchasing public into believing that the product was the genuine "Dr. Jaeger's health underwear":

Held, That such branding, labeling, advertising, and sales, and such simulation, under the circumstances set forth, constituted unfair methods 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 Himes Underwear 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 Himes Underwear 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, and is now and for two years last past has been engaged in the manufacture and sale of shirts and 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, 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, State of New York, where they are made and manufactured into the finished products 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 inter-

state commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed partly of wool as "Fine natural wool"; 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.

PAR. 4. That a certain brand of underwear, viz, "Dr. Jaeger's health underwear," is a staple product, and has been manufactured and sold to the trade located in the various States of the United States for several years last past, and by means of extensive advertising in newspapers, magazines, trade papers, etc., "Dr. Jaeger's health underwear" has become well known to the trade and purchasing public and to be of a certain quality.

PAR. 5. That the respondent, Himes Underwear Co., well knowing that "Dr. Jaeger's health underwear" had been for years extensively advertised throughout the United States and well knowing that this product had acquired a certain reputation for quality, adopted the label or brand "Men's fine Jaeger drawers," which label or brand so closely resembles and simulates the brand "Dr. Jaeger's health underwear" as to deceive and mislead the purchasing public into believing that respondent's product is one and the same as that of the aforesaid "Dr. Jaeger's health underwear," and with the effect of securing to the respondent the benefit and advantage of extensive advertising previously done by the manufacturers of the said "Dr. Jaeger's health underwear."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, Himes Underwear 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 Com-

mission, 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 vice president, E. L. Orth, 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 conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Himes Underwear Co., is a New York corporation, with its principal place of business located 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, Himes Underwear 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 the respondent did, prior to the 1st day of July, 1919, but not since this date, in the sale and shipment of certain of its knit goods in interstate commerce as above described, label, advertise, and brand such knit goods as "Fine natural wool."

PAR. 4. That the aforesaid knit goods 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 said articles varying from 20 to 80 per cent; that the aforesaid brand and label does not show or indicate the true composition and constituent parts of the materials used in the manufacture of said knit goods; that the brand and label used to mark the said knit goods named in paragraph 3 indicates the same is composed wholly of wool, and thereby the purchasing public is led to believe the said knit goods 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 underwear 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.

PAR. 6. That "Dr. Jaeger's health underwear" is a staple brand of underwear and has been manufactured and sold to the trade located in the various States of the United States for several years last past and as such has become well known to the trade and to the purchasing public and is recognized to be of a certain standard quality by virtue of long use and extensive advertising; that the respondent adopted the label and brand "Men's fine Jaeger drawers" and applied the same to certain of its underwear and advertised and sold same to the purchasing public; that this label and brand does resemble and simulate the aforesaid brand, "Dr. Jaeger's health underwear," and misleads and confuses the purchasing public into believing that respondent's un-

derwear is one and the same as that of the aforesaid "Dr. Jaeger's health underwear"; that the respondent ceased using the label "Men's fine Jaeger drawers" July 1, 1919, and has not since this date used the said brand and label.

CONCLUSIONS.

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 respondent, Himes Underwear Co., having entered its appearance by E. L. Orth, its vice president, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts, in which it 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, and 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 conclusions that the respondent has 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, Himes Underwear Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly, first, employing

or using the label and brand "Fine natural wool," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit 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); second, employing or using as a brand or label or in any manner whatsoever the name "Jaeger" to designate its underwear.

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.

JAMES DUFFY, TRADING AS THE SANITARY