

FEDERAL TRADE COMMISSION

v.

AMERICAN HOSIERY COMPANY.

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

Docket 413.—August 10, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, branded, labeled, advertised, and sold certain lines of underwear and shirts, composed only partly of wool, as "Merino," "Super-cashmere," "Extra super-merino," and "Merino shirts," with a tendency thereby to mislead the public and injure competitors:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the American Hosiery 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, American Hosiery Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, having its principal office and place of business in the city of New Britain, in said State, and is now and for more than two years last past has been 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 purchases and enters into contracts for the purchase of the necessary

3 F. T. C. 1

Findings.

3 F. T. C.

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 New Britain, 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 New Britain, State of Connecticut, 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 "Merino," "Super-cashmere," "Extra super-merino," "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.

(Amended.)

The Federal Trade Commission having reason to believe that the above-named respondent, American Hosiery 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 attorneys, 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

1

Findings.

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, the American Hosiery Co., is a Connecticut corporation with its principal office and place of business located at the city of New Britain in said State, and has been for several years and is engaged in the manufacture and sale of underwear, shirts, and other wearing apparel through and among various States of the United States, and has conducted such business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, American Hosiery Co., in the conduct of its business as aforesaid, sells and distributes its product of underwear, shirts, etc., to purchasers thereof located in different States of the United States, and that there is and has been at all times herein mentioned a constant current of trade and commerce in said products between and among various States of the United States.

PAR. 3. That for more than a year last past the respondent, in the sale of its products in interstate commerce, as hereinbefore described, has labeled, advertised, and branded certain lines of underwear and shirts as "Merino," "Super-cashmere," "Extra super-merino," "Merino shirts."

PAR. 4. That the underwear and shirts referred to in paragraph 3 are not composed wholly of wool, part of the material in them being wool and part cotton, the proportion of wool varying from 20 to 80 per cent; that said brands and labels may indicate to the public that said underwear and shirts are composed wholly of wool and thereby the purchasing public may be led to believe that the said underwear and shirts so branded and labeled, as aforesaid, are composed wholly of wool.

PAR. 5. That there is no evidence that the respondent has acted with any malice or deliberate intent or purpose to mislead the public in using the brands and labels aforesaid.

PAR. 6. That the respondent, at different times covering a period of 16 years, and particularly in the years 1904, 1905, 1911, and 1912, has made known to the retail trade in underwear with whom it did business, through its publications in the form of descriptive price

Order.

3 F. T. C.

lists, that the articles put out by it for sale and labeled "Merino," "Super-cashmere," "Extra super-merino," and "Merino shirts" contained cotton as well as wool; and that in December, 1919, subsequent to the issuance of the complaint in this proceeding, respondent published the said facts as to the presence of cotton as well as wool in its products branded as aforesaid, through advertisements in the daily press in the cities of New York, Boston, Washington, Philadelphia, and Hartford, Conn.

PAR. 7. That the terms "Merino" and "Cashmere" as used and understood in the underwear trade have generally signified fabrics composed of a mixture of wool and cotton.

PAR. 8. That for the past 20 years it has been the general custom and practice among underwear manufacturers in the United States to label, brand, and advertise underwear of their manufacture as "Merino" and "Cashmere" when in fact such underwear so described is not composed wholly of wool, but contains an admixture of cotton; that large quantities of underwear have been imported into the United States from foreign countries and come into direct competition with the underwear manufactured in the United States; that a part of the underwear so imported into the United States has been and is now labeled, branded, and advertised as "Merino" underwear in accordance with the general custom and practice in the underwear trade in the United States, although the said underwear is not composed wholly of wool, but, on the contrary, is composed of cotton and wool in varying percentages.

PAR. 9. That the tendency of said labels to mislead the public entails interference with fair competition.

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 respondent, American Hosiery Co., having entered its appearance by Gross, Gross & Hyde, its attorneys, 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

1

Order.

evidence in this case and in lieu of testimony and proceed forthwith on 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 conclusion 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, American Hosiery Co., its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Merino," "Super-cashmere," "Extra super-merino," and "Merino shirts" or any compound thereof, or any similar descriptive brands or labels on underwear, socks, or other knit goods except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified, or (2) when the term descriptive of the wool stock is joined with the name of other staple or staples contained in the knitted fabric, e. g., merino wool and cotton; supercashmere wool and cotton; extra supermerino wool and cotton; merino shirts, wool and cotton.

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.

Complaint.

3 F. T. C.