

Complaint.

3 F. T. C.

FEDERAL TRADE COMMISSION

v.

ADOLPH BRAUDE AND LOUIS BRAUDE, DOING BUSINESS AS FRANKLIN KNITTING MILLS.

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

Docket 605—December 6, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture, sale, and distribution of knitted fabrics under the name of the Franklin Knitting Mills, of New York, and as such acquired a reputation for its product, and thereafter a competitor adopted the name "Franklin Knitting Mills," with the tendency and effect of misleading and deceiving the purchasing public:

Held, That such simulation of name, 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 Adolph Braude and Louis Braude, partners, conducting business and trading under the style and firm name of Franklin Knitting Mills, have been, and now are, using unfair methods of competition in commerce, in violation of the intent and meaning 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 the Federal Trade Commission having determined that a complaint should issue against the said Adolph Braude and Louis Braude, trading as Franklin Knitting Mills, as above set forth, and that a full and complete inquiry in respect thereof would be to the interest of the public;

Therefore the Federal Trade Commission, complaining, shows that it is informed in such manner that it believes the facts to be substantially as herein set out, and therefore charges as follows:

PARAGRAPH 1. That the said Adolph Braude and Louis Braude are partners, conducting business under the style and firm name of Franklin Knitting Mills, at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and also at 1182 Broadway, in the city of New York, in the State of New York; that the said respondents have their principal office and place of business at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and a branch office and place of busi-

ness at 1182 Broadway, in the city of New York, in the State of New York, and are engaged in the business of buying and selling knitted goods and other merchandise as wholesale merchants or jobbers.

PAR. 2. That the said Adolph Braude and Louis Braude, conducting their business under the style and firm name of Franklin Knitting Mills, have been continuously for a year last past, and still are, engaged in commerce, as defined by the act of Congress approved September 26, 1914, as above set forth; that their business consists of buying and selling knitted goods and other kinds of merchandise in the city of Philadelphia, in the State of Pennsylvania, and the city of New York, in the State of New York, and transporting said goods and merchandise among other States and Territories of the United States and the District of Columbia, and there is continually, and has been at all times within the year last past, and for a longer period of time, a constant current of trade, in commerce, by said respondents in such knitted goods and other merchandise among and between the various States of the United States, the Territories thereof, and the District of Columbia, to and through the city of Philadelphia, in the State of Pennsylvania, and the city of New York, in the State of New York, and therefrom through other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the said Adolph Braude and Louis Braude, partners in business and trading under the style and firm name of Franklin Knitting Mills, while engaged in commerce in the course of their business of buying and selling knitted goods as wholesale merchants or jobbers, with their offices and places of business located at 811 North Franklin Street, in the city of Philadelphia, and 1182 Broadway, in the city of New York, have been for more than a year last past, and still are, trading as Franklin Knitting Mills, and in the conduct of their business as jobbers have adopted the name of Franklin Knitting Mills as the firm's name; that the words "Knitting Mills" used after the word "Franklin," in such name, indicate, represent, and lead the trade, customers, and public generally to believe that the said parties, operating under said firm name, are manufacturers, and manufacture, or knit, the knitted goods advertised and sold in commerce by them, when in truth and in fact the said defendants are not manufacturers and do not manufacture and knit such goods, but are wholesale merchants or jobbers and buy the goods so advertised and sold by them.

PAR. 4. That the said Adolph Braude and Louis Braude formed a partnership for the conduct of business as wholesale dealers in

Findings.¹

3 F. T. C.

knitted goods and other merchandise in the year 1913, adopted the name of Franklin Knitting Mills, and engaged in business as wholesale merchants or jobbers at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and also had another branch place of business at 1182 Broadway, in the city of New York, State of New York, in commerce, under said firm name of Franklin Knitting Mills; that the respondents do not knit or manufacture the goods, or any part of them, sold by them; that at the time the said respondents began their business under the firm name of Franklin Knitting Mills there was then in existence a corporation whose legal corporate name was "Franklin Knitting Mills (Inc.)," which corporation was engaged in commerce and had been chartered, organized, and engaged in business since the year 1909, for some time previous to the time that respondents adopted and selected their name and began their business; that the said Franklin Knitting Mills (Inc.) conducted its business at 511 East Seventy-second Street, in the city of New York, in the State of New York, where it manufactured and knitted a part of the goods sold by it, and also had a sales house at 200 Fifth Avenue, in the city of New York, and is still actively engaged in conducting its business, and while it was so conducting its business the respondents chose and adopted the name of Franklin Knitting Mills and operated and conducted the same general kind of business of buying and selling knitted goods and other merchandise, and the said respondents, although they have adopted the name of Franklin Knitting Mills and continued to conduct their business under such name, do not manufacture or knit any of the goods sold by them.

PAR. 5. That by reason of the facts in this complaint, hereinbefore set out, the respondents, Adolph Braude and Louis Braude, by adopting and continuing to use the name of Franklin Knitting Mills, which is similar to the name of the New York corporation whose corporate name is Franklin Knitting Mills (Inc.), which was engaged in business when respondents' firm was organized, both in the city of Philadelphia and the city of New York, and in using the words "Knitting Mills," indicating that they knit or manufacture the goods, or part of the goods, sold by them, are [using] unfair methods of competition in commerce in violation of section 5 of the Federal Trade Commission act approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Adolph Braude and Louis Braude, doing

business as Franklin Knitting Mills, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answer herein, and subsequently entered their appearance by their attorneys, Messrs. Mingle, Finklestein & Ehrich, a hearing was had and evidence was thereupon introduced in support of the allegations of said complaint before Byron L. Shinn, an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon counsel for respondents stated, during such hearing and before said examiner, that it was shown that respondents' use of the name "Franklin Knitting Mills" had caused confusion in the public mind, and that similar conflict and confusion might arise in the future, and that respondents would not in the future conduct their business under such name, and that respondents consented that the Federal Trade Commission enter such order in this regard as it deemed necessary, all of which will more fully appear from the files and record of this cause.

And thereupon this proceeding came on for final disposition, and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the said Adolph Braude and Louis Braude are partners, and have been since 1913, conducting business under the style and firm name of Franklin Knitting Mills, at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and also at 1182 Broadway, in the city of New York, in the State of New York; that the said respondents have their principal office and place of business at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and a branch office and place of business at 1182 Broadway, in the city of New York, in the State of New York, and are engaged in the business of buying and selling knitted goods and other merchandise, as wholesale merchants or jobbers.

PAR. 2. That the said Adolph Braude and Louis Braude, conducting their business under the style and firm name of Franklin Knitting Mills, have been continuously for a year last past, and still are, engaged in commerce, as defined by the 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"; that their business consists of buying and selling knitted goods in the city of Philadelphia, in the State of Pennsylvania, and

Findings.

3 F. T. C.

the city of New York, in the State of New York, and transporting said goods and merchandise among other States and Territories of the United States and the District of Columbia, and there is continually, and has been at all times within the year last past, and for a longer period of time, a constant current of trade, in commerce, by said respondents in such knitted goods among and between the various States of the United States, the Territories thereof, and the District of Columbia, to and through the city of Philadelphia, in the State of Pennsylvania, and the city of New York, in the State of New York, and therefrom through other States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, partnerships, and corporations, similarly engaged in buying, selling, and transporting knitted goods, in and through the several States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That in 1909 the Franklin Knitting Mills, of New York, was duly and lawfully organized as a corporation, adopting and using such name as its corporate name, which name it has used and enjoyed continuously from such time down to the present time, and still uses and enjoys such name, as its corporate and business name. That said Franklin Knitting Mills, of New York, is and has been since such time engaged in the manufacture and production of knitted fabrics, and particularly of silk-knitted fabrics, such as knitted underwear, mufflers, sweaters, scarfs, etc. That the principal place of business of said Franklin Knitting Mills, of New York, was and is at 511 East Seventy-second Street, in the city of New York, State of New York, where it manufactures the goods sold by it; and the showroom and sales house of said Franklin Knitting Mills, of New York, was and is at 200 Fifth Avenue, in said city and State. That said Franklin Knitting Mills, of New York, maintained for a considerable time a branch office or agency in the city of Philadelphia, State of Pennsylvania. That said Franklin Knitting Mills, of New York, has been since the time aforesaid and is now also engaged in the sale and distribution of the said products manufactured by it, as aforesaid, in and through the several States of the United States, the Territories thereof, and the District of Columbia. That said Franklin Knitting Mills, of New York, when organized and incorporated in 1909, as aforesaid, took over the business, assets, trade name, etc., of a concern known as Baron & Shafter, which concern had for a considerable time prior to 1909, when it was taken over by said Franklin Knitting Mills, of New York, as aforesaid, conducted its business of manufacturing, selling, and distributing knitted goods under the trade name of Franklin Knitting Mills.

PAR. 4. That said Franklin Knitting Mills, of New York, while engaged in the manufacture, distribution, and sale of knitted goods, as aforesaid, had built up and now enjoys a business of considerable magnitude and importance. That it always dealt with its customers and sold its aforesaid knitted goods under its corporate name, Franklin Knitting Mills, of New York; and was widely known to the trade and public generally under such name, and no other, and the knitted goods manufactured and sold by it were widely and favorably known to the public as the goods of the Franklin Knitting Mills, of New York.

PAR. 5. That notwithstanding the trade and business enjoyed by Franklin Knitting Mills, of New York, under such name, and the valuable good will of said Franklin Knitting Mills, of New York, in such name, the respondents, Adolph Braude and Louis Braude, as aforesaid, adopted as their trade name "Franklin Knitting Mills," the same name as the corporate and business name of Franklin Knitting Mills, of New York. That under the name, "Franklin Knitting Mills," respondents sold knitted goods to divers purchasers in the several States of the United States, the Territories thereof, and the District of Columbia, as aforesaid. That the name "Franklin Knitting Mills, of New York," appeared upon the letterhead, envelopes, invoices, statements, bills, and all other stationery used in its business by Franklin Knitting Mills, of New York, and likewise appeared upon the cards used by its salesmen. That upon the letterhead, stationery, etc., used in the course of their business by respondents, appear the words: "Franklin Knitting Mills, 811 North Franklin Street, Philadelphia, Pa., manufacturers of knit wear." That the respondents do not manufacture the knitted goods or other merchandise sold and distributed by them, but are wholesalers or jobbers, as aforesaid. That Franklin Knitting Mills, of New York, maintained for a considerable time a branch office or agency in the city of Philadelphia, State of Pennsylvania, as aforesaid. That the natural effect and tendency of the use of such name by respondents, as aforesaid, was and is to mislead and deceive the purchasing public, and to lead the public to believe that respondents were one and the same concern as Franklin Knitting Mills, of New York, and that the knitted goods sold and distributed by respondents were the knitted goods manufactured, sold, and distributed by Franklin Knitting Mills, of New York. That on several occasions the purchasing public has been so misled and deceived, as aforesaid, and misled and confused as to the identity of respondents, taking them to be one and the same as Franklin Knitting Mills, of New York.

Order.

3 F. T. C.

PAR. 6. That pursuant to the provisions of an act of the Assembly of the Commonwealth of Pennsylvania, approved June 28, 1917, and entitled, "An act making it unlawful for any individual or individuals to carry on or conduct any business under an assumed or fictitious name, style, or designation unless upon the filing of a certificate to that effect in the office of the secretary of the Commonwealth and of the prothonotary, etc.," under date of January 31, 1918, one of said respondents, to wit, Adolph Braude, filed such certificate, stating that he was "Carrying on business under the assumed or fictitious name, style, or designation of Franklin Knitting Mills, with place of business" in the city of Philadelphia, State of Pennsylvania.

CONCLUSION.

That the practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of the 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.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and the testimony and evidence, and the Commission having made its findings as to the facts with its conclusion, that the respondents have violated the provisions of the 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,"

It is now ordered, That the respondents, Adolph Braude and Louis Braude, copartners, doing business under the trade name and style of Franklin Knitting Mills, do cease and desist from directly or indirectly, either severally as individuals or jointly as a partnership, or otherwise, using the words "Franklin Knitting Mills," in connection with any advertising, or offering for sale, or sale of knitted merchandise such as knitted cloth, vests, sweaters, and neckwear.

It is further ordered, That the respondents, within 30 days after the receipt of a copy of this order, report in writing to the Commission the manner and extent to which compliance with this order has been made by said respondents.

MONTGOMERY WARD & CO.

151

Complaint.