

Complaint.

FEDERAL TRADE COMMISSION

v.

WINSTED HOSIERY COMPANY.*

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

Docket 214.—January 14, 1921.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of knit underwear, in competition with manufacturers and importers of underwear composed wholly of wool, and also with manufacturers and importers of underwear composed partly of cotton, who either correctly branded and labeled their underwear with reference to composition or failed to brand and label the same at all in that respect; branded, labeled, advertised and sold certain lines of its underwear not composed wholly of wool, but the fabric of which, due to its manufacture from "wool-spun" yarns composed of cotton and wool, was soft and woolly, as "Men's Natural Merino Shirts," "Men's Gray Wool Shirts," "Men's Natural Worsted Shirts," "Australlian Wool Shirts," and "Men's Natural Wool Shirts," and thereby misled a substantial part of the purchasing public into believing that such goods were all wool, and also tended to encourage and aid representations to consumers to that effect by ignorant or unscrupulous retailers and sales people:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Winsted 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 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," 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, Winsted 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 factory, office, and place of business located at the town of Winsted, in said State, now and for more than one year last past engaged in manufacturing and selling underwear throughout the States and Territories of

* Modified and new findings. See footnote on pp. 190, 191, and original findings in II F. T. C. 202 *et seq.*

Findings.

3 F. T. C.

the United States, and that at all times hereinafter mentioned respondent has carried on and conducted such business in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Winsted Hosiery Co., in the conduct of its business, manufactures such underwear so sold by it in its factory located at the town of Winsted, State of Connecticut, and purchases and enters into contracts of purchase for the necessary component materials needed therefor, in different States and Territories of the United States, transporting the same through other States of the United States in and to said town of Winsted, where they are made and 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 other States and Territories 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, the Territories thereof, and the District of Columbia, and especially to and through the town of Winsted, State of Connecticut, and therefrom to and through other States of the United States, the Territories thereof and the District of Columbia.

PAR. 3. That for more than one year last past the respondent, Winsted Hosiery Co., with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business manufactured and sold in commerce aforesaid, and labeled, advertised, and branded certain lines of underwear composed of but a small amount of wool as "Men's Natural Merino Shirts," "Men's Gray Wool Shirts," "Men's Natural Wool Shirts," "Men's Natural Worsted Shirts," "Australian Wool 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 made and composed wholly of wool.

REPORT, MODIFIED AND NEW FINDINGS AS TO THE FACTS, AND RECOMMENDED MODIFIED 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 respondent charging it with the use of unfair

* United States Circuit Court of Appeals for the second circuit.

Winsted Hosiery Company, petitioner, v. Federal Trade Commission, respondent.
The petitioner, Winsted Hosiery Co., having filed in this court, under the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to

189

Findings.

methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its attorney, and filed its answer herein, a statement of facts was agreed upon by counsel for the Commission and for the respondent, to be taken in lieu of evidence, and findings of fact and conclusion were thereupon adopted by the Commission and an order made thereon, dated January 29, 1920, that the respondent cease and desist from using certain labels alleged in the complaint herein, except as provided in said order; thereafter the respondent, by its attorneys, filed with the United States Circuit Court of Appeals, Second Circuit, a petition to review said order as provided by law, and notice of the same was duly served upon the Commission; thereafter application was made on behalf of the Commission to the said court for permission to take additional evidence, under the provisions of section 5 of the act of Congress approved September 26, 1914, and by an order dated October 18, 1920, the motion was granted and ninety days was allowed within which to take such evidence; such additional evidence thereafter having been introduced in support of the allegations of said complaint before Mr. James McKeag, an examiner of the Federal Trade Commission, theretofore duly appointed, and an opportunity having been given to the respondent to introduce evidence on its behalf, and respondent, by its attorneys, having rested without the taking of evidence.

Now, in accordance with the provisions of section 5 of the act of Congress approved September 26, 1914, the Commission having duly considered the record, and being now fully advised in the premises, modifies its findings as to the facts, as previously adopted, and makes new findings by reason of the additional evidence, constituting all its findings of facts herein, as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Winsted Hosiery Co., is and has been for the last 20 years a corporation duly incorporated under the

create a Federal Trade Commission, to define its powers and duties, and for other purposes," a written petition for review of an order issued by the Federal Trade Commission, the respondent herein, directing the petitioner to cease and desist from the use of certain labels on underwear manufactured by it, and the Federal Trade Commission, under another provision of said act, having applied to this court for leave to adduce additional evidence and such leave having been granted by an order dated October 18, 1920, as follows: "A motion having been made herein by counsel for the respondent to remand this proceeding for the purpose of taking further testimony: Upon consideration thereof it is ordered that said motion be and hereby is granted, the respondent to have 90 days from the date hereof within which to take such evidence"; and additional evidence having been taken by respondent in pursuance of said order, now the respondent, the Federal Trade Commission, makes return of such additional evidence to this court and files therewith its modified and new findings of facts and its recommendation for the modification of its original order, as hereto attached:

By the Commission:

[SEAL.]

Dated this 14th day of January, A. D. 1921.

Attest:

(Signed)

HUSTON THOMPSON, *Chairman.*

(Signed)

J. P. YODER, *Secretary.*

Findings.

3 F. T. C.

laws of the State of Connecticut, and is and has been during that time engaged in the manufacture of knit underwear, shirts and drawers, and hosiery, having its principal place of business and factory at Winstead, Conn., and a branch factory at Norfolk, Conn., and one at Unionville, Conn.; the respondent for more than 10 years has sold, and now sells, its products of knit underwear, including men's shirts and drawers, throughout various States of the United States, and has conducted its business of manufacture and sale, as above described, in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. The respondent in the conduct of its business, as stated in paragraph 1, has for more than 10 years prior to October 30, 1918, the date of the issuance of the complaint herein, sold and shipped its products, namely, knit underwear, to purchasers thereof located in different States of the United States; and during the time named there has been a constant trade and commerce in such products between and among various States of the United States. For the three years prior to October 31, 1918, the respondent's sales of its products of knit underwear aggregated \$2,500,000.

PAR. 3. Respondent admits by its answer that for more than one year prior to January, 1919, it has in the conduct of its business manufactured and sold in commerce (as set forth in the complaint herein) and labeled, advertised, and branded certain lines of underwear as "Men's Natural Merino Shirts," "Men's Gray Wool Shirts," "Men's Natural Worsted Shirts," "Australian Wool Shirts," and "Men's Natural Wool Shirts," and that such underwear is not composed wholly of wool.

PAR. 4. The methods employed by the respondent in labeling, advertising, and branding its product are effective to carry both to the retailer and the ultimate consumer thereof, the representation that such garments were composed wholly of wool, and in the absence of technical knowledge in either the retailer or the consumer tended to create the belief that such garments were, in fact, wholly composed of wool.

PAR. 5. During the period of more than five years prior to October 30, 1918, labels bearing the various legends set out in paragraph 3 have been pasted on or attached by respondent to the boxes in which it sold and delivered to its customers underwear manufactured by it; said labels also bore respondent's trade-mark, consisting of the words "Winsted Hosiery Company" in a circle.

PAR. 6. The underwear so labeled, advertised, and sold, as set forth in paragraphs 3 and 5, was not composed wholly of wool, being part

wool and part cotton, the percentage of wool therein varying generally from 25 per cent to 80 per cent, and in some cases being as low as 10 per cent; as a rule, for the underwear containing 50 per cent or less of wool respondent has used labels containing the word "Merino," and on those containing more than 50 per cent of wool labels containing the word "Wool."

PAR. 7. The percentage of wool in the underwear manufactured by respondent and sold under the labels stated above, varied from time to time according to the relative cost of wool and cotton and according to the loss in the process of fulling, the latter extending to 5 per cent. Respondent has not put any all-wool underwear on the market for a good many years.

PAR. 8. Respondent sells its product of underwear to retailers.

PAR. 9. Respondent's boxes containing its underwear, labeled as set forth in paragraph 3, have been customarily placed by purchasers, namely, retailers, on their shelves, exposing said labels to the view of their customers, and retailers and their salesmen have sold the contents from the boxes so labeled to the public.

PAR. 10. The word "merino" means primarily and popularly a breed of sheep whose fleece is a fine long-staple wool, and as applied to wool it signifies the fleece of that sheep or a grade corresponding to it in quality. It is so used commercially in the wool trade and commands the highest price.

The noun "wool" means the fleece or coat of the domesticated sheep, and as an adjective the word means "made of wool."

"Worsted" means primarily and popularly a yarn or fabric made wholly of wool.

"Australian Wool" means primarily and popularly wool grown in Australia and is a distinct commodity in the wool and yarn markets, and is known generally as a fine grade of wool.

PAR. 11. The merino sheep, meaning a sheep of the merino blood, has been celebrated for centuries in Europe for its fine wool, and was imported into this country early in the nineteenth century, and has been conserved and bred here ever since and recognized as the sheep producing the highest grade of fine wool. It has existed and now exists in large numbers in various parts of this country.

The classification or grading of wool in the wool market is based on the standard of the wool of the merino sheep, the terms "fine," "three-fourths blood," "half-blood," etc., as grades of wool, referring primarily to full-blood, three-fourths and one-half blood, respectively, of the merino breed.

Findings.

3 F. T. C.

PAR. 12. A substantial part of the consuming public understand the words "merino," "natural merino," "natural wool," "gray wool," "natural worsted," "Australian wool," and "gray merino" as applied to underwear to indicate all-wool underwear.

PAR. 13. Some buyers for retailers and salespeople understand the words "merino," "natural merino," "natural wool," "gray wool," "natural worsted," "Australian wool," and "gray merino," as applied to underwear to indicate all-wool underwear.

PAR. 14. Some retailers and their salesmen rely on the labels on the boxes in which they sell their underwear, including respondent's, such as "Merino," "Natural Wool," "Australian Wool," and "Gray Merino," and use them to sell underwear under such labels as all wool.

PAR. 15. The labels "Merino," "Natural Merino," "Natural Wool," "Gray Wool," "Natural Worsted," "Australian Wool," and "Gray Merino," used on garments composed partly of wool and partly of cotton, or their containers, tend to encourage and aid representations to consumers by ignorant or unscrupulous retailers and salesmen that the underwear so labeled is all wool. The pay of retail salesmen of underwear often depends in part on the amount of their sales.

PAR. 16. The labels "Natural Merino," "Natural Wool," "Gray Wool," "Natural Worsted," "Australian Wool," and "Gray Merino," as used by respondent for its underwear composed partly of wool and partly of cotton, or on the containers, are calculated to and do mislead a substantial part of the purchasing public to believe that the garments sold under such labels are all wool.

PAR. 17. The words "merino," "wool," and "worsted" as used by respondent in labels applied to their product of knit underwear severally tend to and do mislead a substantial part of the consuming public to believe that they indicate all-wool garments and into purchasing in that belief.

PAR. 18. The respondent makes and uses "wool-spun" yarns, composed of cotton and wool, in the underwear manufactured and sold by it under the labels as stated in paragraph 16, which make a soft, woolly fabric and tend to cause the purchasing public to believe that it is all wool.

PAR. 19. The terms "merino," "natural merino," and "natural wool" have been for many years used by some manufacturers as labels for underwear made entirely of cotton. The sales people of retailers can not tell from their own examination the proportions of wool and cotton in knit underwear composed partly of wool and partly of cotton.

PAR. 20. The word "merino" is used by manufacturers of yarn and knit underwear and largely by jobbers and retailers as a trade term, meaning a combination of cotton and wool. Yarns made partly of cotton and partly of wool fibres and known in the terminology of the trade as "merino" yarns are sold and billed by yarn manufacturers to underwear manufacturers as containing definitely stated percentages of cotton and wool. The term "merino" when applied in the retail trade to underwear composed partly of wool and partly of cotton is used regardless of the percentages of wool and cotton and has no definite meaning.

PAR. 21. All-wool knit underwear has been widely manufactured and sold in this country for 20 years or more under various labels, such as "All-wool," "Wool," "Natural Wool," "Random Wool," and "Pure Wool," and under trade-mark brands without any words descriptive of the composition thereof. All-wool knit underwear of domestic manufacture has constituted a substantial proportion of the total product of all-wool and wool-and-cotton underwear. According to the census of 1914, for manufacture of textiles, the latest available, the amount of all-wool knit underwear—namely, shirts and drawers—as compared with the output of such underwear made partly of cotton and partly of wool, was for the year 1914 in quantity—that is, by dozens—373,045 dozens to 1,434,504 dozens and in value \$3,448,575 to \$9,228,686 or 20 per cent approximately in quantity and 27 per cent in value of the entire product of underwear in this country composed of wool in whole or in part.

PAR. 22. All-wool knit underwear has been imported for sale into this country by various retail dealers for 20 years or more, has been sold under various labels such as "All-wool," "Wool," "Natural Wool," "Pure Wool," "Lamb's Wool," and under trade-marks, e. g., "Demophilo," "Two Steeples," and some has been so imported and sold without any label indicating its composition. Knit underwear has been imported for sale into this country for 20 years or more, composed of various percentages of cotton and wool, under the labels "Cotton and Wool," "Cotton and Wool Mixed," "Gauze Merino," "Wool and Cotton" or "Cotton and Wool," according to whether the percentage of wool or cotton present was greater or less.

PAR. 23. The knit underwear manufactured in this country consisting of cotton and wool in various percentages has been sold for 10 years or more under a variety of labels differing from respondent's as set out in paragraph 3; a large number of the total output of such garments have been made and sold by manufacturers without any label or marking describing the materials or fibers of which they

Findings.

3 F. T. C.

are composed, such as cotton and wool, but under the private trade-mark or brand of the manufacturer or retailer alone. Manufacturers of knit underwear made partly of cotton and partly of wool have been accustomed to sell their underwear under labels in the form and language requested by their customers, and such labels include both trade-marks or brands without descriptive words and terms such as "Fine" and "Superior" in combination with the word "Underwear," without words descriptive of the composition, and fancy or coined names. Such underwear has also been sold under the labels "Cotton and Wool" and "Part Wool."

PAR. 24. Knit underwear composed partly of cotton and partly of wool, under the labels "Natural Merino," "Natural Wool," "Gray Wool," "Natural Worsted," "Australian Wool," and "Gray Merino," has been sold by respondent in competition with underwear manufactured wholly of wool, imported and domestic, and manufactured and sold under labels indicating that fact, or under some of the labels named above in this paragraph or under private trade-marks or brands alone, without descriptive terms, and in competition with knit underwear composed partly of cotton and partly of wool, imported or domestic, manufactured and sold under labels indicating such composition or under trade-marks or brands alone, without descriptive terms or under labels bearing fancy or coined names.

PAR. 25. Some retailers have ceased the use of "Merino" on underwear made partly of cotton and partly of wool since before the beginning of this proceeding, because of its uncertain, ambiguous, and misleading meaning to the public.

PAR. 26. It is the sense of the underwear industry as expressed by the American Knit Goods Manufacturers, an organization representing approximately 75 per cent of manufacturers in this country of the class of knit underwear manufactured by respondent, that the use on knit underwear composed partly of wool and partly of cotton of the words "Wool Underwear," "Worsted Underwear," "Natural Wool Underwear," "Australian Wool Underwear," and "Natural Merino," among others, are "improper," and the words "Wool and Cotton" are recommended by said association for use as labels on underwear made partly of wool and partly of cotton, and the said organization has by official action requested its members to drop the use of the word "Merino" as a label on underwear made of cotton and wool unless followed by the words "wool and cotton."

PAR. 27. It is the sense of retailers as expressed by the board of directors of the National Association of Retail Clothiers that the terms (1) "Natural Merino," (2) "Gray Wool," (3) "Natural

189

Order.

Wool," (4) "Natural Worsted," (5) "Australian Wool," used as a brand or name on underwear that contained cotton or other adulterant than wool, or on the box containing such underwear, might mislead the consumer and in many instances retailers into the belief that garments so marked were not adulterated and that such misleading terms should not be used.

PAR. 28. Respondent has continuously up to the present time manufactured and sold knit underwear under the labels set out in paragraph 3, and the proportions of wool and cotton therein have not differed materially from those stated in paragraph 6.

CONCLUSIONS.

The practices of the said respondent, 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."

RECOMMENDED MODIFIED ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission; the answer of the respondent, the statement of facts agreed upon by counsel for the Commission and respondent, and upon the additional evidence taken for the Commission under an order of the United States Circuit Court of Appeals for the Second Circuit, dated October 18, 1920, and the Commission having, by reason of such additional evidence, modified some of its original findings and adopted new findings as to the facts and adopted its conclusions that the respondent has 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 now recommends the following modification of its original order to cease and desist herein, dated January 20, 1920:

It is now ordered, That the respondent, the Winsted Hosiery Co., its officers, agents, representatives, servants, and employees, do cease and desist from employing or using as labels or brands on underwear or other knit goods not composed wholly of wool, or on the wrappers, boxers, or other containers in which they are delivered to customers, the word "Merino," "Wool," or "Worsted," alone or in combination with any other word or words, unless accompanied by a word or

Order.

3 F. T. C.

words designating the substance, fiber, or material, other than wool, of which the garments are composed in part (e. g., "Merino, Wool, and Cotton"; "Wool and Cotton"; "Worsted, Wool and Cotton"; "Wool, Cotton and Silk"), or by a word or words otherwise clearly indicating that such underwear or other goods is not made wholly of wool (e. g., part wool).

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.

THE TAIYO TRADING CO., INC.

199

Complaint.