

Complaint.

FEDERAL TRADE COMMISSION

v.

MARY L. HICKS, DOING BUSINESS UNDER THE NAME
OF LOUISE.

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

Docket 843—March 8, 1922.

SYLLABUS.

Where an individual engaged in the sale of millinery as successor to a business known as the “Louise” store, continued to carry on the same under the brand, trade name, and trade-mark of “*Marie Louise*,” under which name the business had become widely and favorably known and to which a valuable good will had attached; and thereafter a competitor, with full knowledge of the existence and conduct of the other business, adopted and used for her own business, which she located near by, the brand, trade name, and trademark, “Louise,” written in a style similar to that of the original brand and advertised the same accordingly with the addition of her own name in an inconspicuous place and type; with the result that her competitor’s customers and the public were deceived and misled into believing her business to be identical with that of her competitor, and that many of said customers did business with her believing they were dealing with the other establishment:

Held, That such simulation of brand, trade name and trademark, 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 Mary L. Hicks, doing business under the name Louise, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce within the District of Columbia 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 to the Commission 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 in the year 1909 one Marie Louise Fisher established a millinery business in the City of Washington and District of Columbia at the premises known as number 904 14th St., N.W., in said city and District where she engaged in the making and selling of ladies hats and bonnets; that shortly after commencing

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said business, said Marie Louise Fisher adopted therefor the trade name "Marie Louise" and further adopted as a sign and mark for said business a device consisting of said words "Marie Louise," written in script in a distinctive manner, which said mark she caused to be placed upon her show windows and stationery and upon the lining of the hats and bonnets sold by her and upon the containers wherein said merchandise was delivered; that said Marie Louise Fisher continuously thereafter conducted her said business under said trade name and in connection with said sign and mark, at said premises until the month of June, 1914, when she removed her said business to the premises known as 1516 H St., N.W., in said City and District and there so continued to conduct said business until the month of May, 1920; that in the course and conduct of said business said Marie Louise Fisher acquired a valuable trade, custom and good will among the citizens of said City and District; which said trade, custom and good will was associated with and appertained to said trade name "Marie Louise" and with the device used as a sign and mark therefor as above set out and the said business became well known to the residents of said District under said trade name and associated with said device.

PAR. 2. That in the month of May, 1920, said Marie Louise Fisher sold her said business to one Mary E. Baker, together with the good will thereof and the right to use said trade name "Marie Louise" and said device; that said Mary E. Baker has continuously since said date conducted said business under said trade name, and used said device upon her show windows and stationery and upon the linings of hats and bonnets and upon the containers wherein said merchandise is delivered, in like manner as used by her said vendor.

PAR. 3. That the good will acquired by said Marie Louise Fisher in her said business and associated with the said trade name and with said device was continuously enjoyed by her, and the identification of said business with said trade name and with said device among the citizens of said District continuously persisted until the sale of said business to said Mary E. Baker above set out and since said sale said Mary E. Baker has continued to enjoy said good will and still enjoys the same; and said identification of said business among the residents of said District with said trade name and with said device continued to persist after said sale and still exists.

PAR. 4. That in the month of July, 1920, respondent established a millinery business in the City of Washington and District of Columbia at the premises known as number 1623 H St. N. W., in said City and District where respondent has ever since said date conducted and now conducts a retail business in ladies hats and bonnets, and

in conducting said business has continuously been and is now in competition with all other persons similarly engaged in said District; that upon the opening of her said business respondent, with the intention and purpose of appropriating the business and good will of said Mary E. Baker and with the intention and purpose of misleading and deceiving the public, including the customers of said Mary E. Baker into the belief that respondent's said business was identical with the business of said Mary E. Baker and that the shop of respondent was identical with the shop of said Mary E. Baker or a branch thereof, adopted as a trade name for her, respondent's, said business, the name "Louise" and further adopted as a sign and mark for her said business, a device consisting of said word "Louise" written in script in a form and style similar to the word "Louise" as same appears in the device "Marie Louise" adopted by said Marie Louise Fisher for a sign and mark and now used as such by said Mary E. Baker as hereinbefore set out; that respondent, in furtherance of her said intention and purpose, caused said sign and mark "Louise" to be placed upon her show window and stationery and upon the linings of the hats and bonnets made and sold by her and upon the containers in which said merchandise is delivered, and has, ever since the adoption of her said trade name and device, continuously used and now uses the same with the intention and for the purpose hereinbefore set out.

PAR. 5. That by reason of the acts and things done by respondent as above set out, the residents of the District of Columbia, including customers and prospective customers of said Mary E. Baker and persons engaged in the millinery trade, were and are misled and deceived into the belief that the business of respondent is identical with the business of said Mary E. Baker, that the shop of respondent is identical with or a branch of, the shop of said Mary E. Baker and that the hats, bonnets and other articles of millinery made and sold by respondent are hats, bonnets and millinery made and sold by said Mary E. Baker; that by reason of the premises many residents of said District, including customers and prospective customers of said Mary E. Baker are led to, and do, deal and trade with respondent in the belief that they are trading and dealing with said Mary E. Baker.

PAR. 6. That the above alleged acts and things done by respondent constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," 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 respondent, Mary L. Hicks, doing business under the trade name and style of "Louise," charging her with unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having entered her appearance by her attorney, Lawrence J. Heller, Washington, D. C., and filed her answer, and testimony having been submitted by the Commission and by the respondent before George McCorkle, an Examiner of the Commission, and the Federal Trade Commission 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 in the year 1909, Marie Louise Fisher established a millinery business in the City of Washington, District of Columbia, at the premises known as No. 904 14th Street, Northwest, in said City and District, where she engaged in making and selling ladies' hats and bonnets; that shortly after commencing her said business, Marie Louise Fisher adopted therefor the trade name "*Marie Louise*," and also adopted as a sign and mark for said business, a device consisting of said words, "*Marie Louise*," written in script and peculiar in position, which she caused to be placed upon her show windows and stationery, and also upon the lining of the hats and bonnets sold by her, and upon the containers in which her said merchandise was delivered; that said Marie Louise Fisher continuously conducted her said business under the said trade name as represented, at said premises, until the month of June, 1914, when she removed her said business to the premises known as 1516 H Street, Northwest, in said City and District, and so continued her said business until the month of May, 1920; that in the course and conduct of her said business, Marie Louise Fisher acquired a valuable trade, custom and good will among the citizens of said City and District of Columbia, which said trade, custom and good will was associated with and appertained to said trade name "Marie Louise," and with the device used in the sign and mark therefor, as above set out; that said business became well known to the residents of said District under said trade name and as associated with said device; that the said business so advertised and associated with the said trade name "Marie Louise," was and is also known and spoken of as the "Louise" millinery store, by the residents of said City of Washington in said District of Columbia.

PAR. 2. That during the month of May, 1920, said Marie Louise Fisher sold her said business to one Mary E. Baker, together with the good will thereof, and the right to use the said name of "Marie Louise" and said device; that said Mary E. Baker has continuously, since said date, conducted said business under said trade name, and in connection therewith the said Mary E. Baker has continued to advertise her said business under the said trade name on her show windows and stationery and upon the linings of the hats and bonnets made and sold by her, and upon the containers wherein said merchandise is delivered, in like manner as the same was used by her said vendor, Marie Louise Fisher.

PAR. 3. That the good will acquired by the said Marie Louise Fisher in the said business and associated with the trade name and with said device aforesaid, was continuously enjoyed by her, and the identification of said business with said trade name and with said device among the citizens of said District persisted without interruption until the sale of said business to said Mary E. Baker, as above set out, and since said sale, said Mary E. Baker has continuously enjoyed said good will and still enjoys the same. Identification of said business among the residents of the District of Columbia with said trade name and with said device continued after said sale of said trade name and good will to Mary E. Baker, by Marie Louise Fisher, and continues to exist to this time. That application was made by Mary E. Baker, vendee as aforesaid, July 29, 1920, to the United States Patent Office for registration of her said trade name, and in compliance therewith, the same was duly registered January 4, 1921.

PAR. 4. That in the month of July, 1920, respondent, Mary L. Hicks, a resident of the City of Washington, District of Columbia, established a millinery business in said City of Washington and District of Columbia, at the premises known as No. 1623 H Street, Northwest, in said City and District, at which place respondent has been, ever since said date, and is now, conducting a retail business in ladies' hats and bonnets, and in conducting said business has been and is now in competition with all other persons similarly engaged in said District of Columbia; that respondent adopted as a trade name for her said business the name "Louise," and further adopted as a sign and mark for her said business, a device consisting of the word "Louise," written in script, in form and style similar to the word "Louise" as same appears in the device "Marie Louise," adopted by said Marie Louise Fisher for a sign and mark, and now used as such by said Mary E. Baker, as hereinbefore set out; that respondent caused said sign and mark, "Louise" to be placed upon her show

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windows and stationery and upon the linings of the hats and bonnets made and sold by her, and upon the containers in which said merchandise is delivered, and has, since the adoption of the said trade name and device, continuously used the same to the present time.

PAR. 5. That respondent, upon the opening of her said business at the time and place above stated, knew that a similar business was then being conducted at 1516 H Street, Northwest, in said City and District, under the trade name of "Marie Louise," and that the same business, so conducted under said trade name, was a popular business among the residents of said City and District of Columbia, and within three squares or city blocks of said location respondent set up her said millinery business at the premises numbered 1623 H Street, Northwest, and adopted as a trade name for her business the name "Louise," and further adopted as a sign and mark in her said business the device consisting of the word "Louise," written in script in form and style similar to the word "Louise," as the same appears in the device "Marie Louise," adopted by said Marie Louise Fisher for a sign and mark, and now used by Mary E. Baker, as hereinbefore set out.

PAR. 6. That the respondent, Mary L. Hicks, was given the name "Mary Louise" by her parents, whose surname was Macaboy, and was confirmed in said name according to the rites of some Christian Church, but respondent has always "gone by" the name of "Lula Macaboy," or, since her marriage, as "Lula Hicks," which name was accepted by respondent and used by her in correspondence and applications for work.

PAR. 7. That respondent, in advertising her said millinery business in the newspapers, published and circulating in the City of Washington, District of Columbia, under the trade name of "Louise" as the same appears in the device "Marie Louise," adopted by said Marie Louise Fisher, vendor of Mary E. Baker, placed her said name of M. L. Hicks, or Louise M. Hicks, in an inconspicuous place in said advertisements, and in comparatively small type.

PAR. 8. That the residents of the District of Columbia and customers of Mary E. Baker were and are deceived and misled by the acts of respondent, as above set out, into the belief that the business of respondent is identical with the business of Mary E. Baker, and by reason of the confusion brought about under the conditions above set forth, many customers of the millinery business of Mary E. Baker, trading under the name of "Marie Louise," have thereafter traded with respondent Mary L. Hicks, under the impression that they were dealing with Mary E. Baker, or the "Marie Louise" millinery store.

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CONCLUSION.

That the acts and things done by respondent, as set out in the above findings as to the facts, constitute an unfair method of competition in interstate commerce in the District of Columbia, in violation of the provisions 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, Mary L. Hicks, doing business under the trade name and style of “Louise,” having entered her appearance by her attorney, Lawrence J. Heller, and having filed her answer and the Commission having submitted testimony in support of the charges in the complaint and the respondent having offered testimony in support of her defense, and the attorneys for the Commission and for the respondent having filed their briefs, and the Commission having made and filed its report setting forth its findings as to the facts and its conclusion that the respondent has violated the provisions 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, Mary L. Hicks, cease and desist:

(1) From using or permitting to be used in her behalf, the word “Louise” standing alone or in conjunction with other words or names except the whole name of respondent, in connection with the sale or distribution of ladies’ millinery or in advertisement thereof, and

(2) From simulating the form and manner or appearance of the signs, advertisements or labels of “Marie Louise” or “Louise” as the same are now or may hereafter be used.

It is further ordered, That the respondent, Mary L. Hicks, file a report with the Commission within sixty (60) days from the date of service of this order, setting forth the manner and form of her compliance therewith.

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FEDERAL TRADE COMMISSION DECISIONS.

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FEDERAL TRADE COMMISSION
v.
NATIONAL FURNITURE COMPANY.