

Complaint.

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FEDERAL TRADE COMMISSION

v.

HYGRADE KNITTING COMPANY, INC.

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

Docket 763—April 6, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale to retailers of high grade sweaters, scarfs, and other knitted outer wear for women, under the style of Hygrade Knitting Mills, carried on its business under the said name and advertised, labeled, featured and sold its products as "Hygrade," under which name they had come to be widely and favorably known to the trade and purchasing public as goods made by it; and thereafter a competitor adopted the name Hygrade Knitting Company, Inc., and featured the word "Hygrade" in its labels, stationery, etc.; with the result that customers and the public were confused respecting the identity of the two concerns and their products, and said competitor was thereby enabled to and did pass off its goods as and for those of said corporation:

Held, That such simulation of corporate and trade names and marks, 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 Hygrade Knitting Company, Inc., hereinafter referred to as 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 is a corporation organized on May 6th, 1919, under the laws of the State of New York, with principal place of business at New York City in said State.

PAR. 2. That respondent is engaged in the business of selling in wholesale quantities, knitted outward wearing apparel, principally sweaters and scarfs for ladies, and causes goods sold by it to be transported to the purchasers thereof, from the State of New York through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That on December 12, 1916, there was organized under the laws of the State of New Jersey the Hygrade Knitting Mills, a corporation, which has since its organization been engaged in the business of manufacturing and selling knitted outward wearing apparel, principally sweaters and scarfs for ladies, and causes its products to be transported to the purchasers thereof from the State of New Jersey through and into other States of the United States, and has carried on such business in direct, active competition with other persons, partnerships and corporations similarly engaged; that said Hygrade Knitting Mills has built up an extensive business in the sale of its products, particularly in the eastern States of the United States and the New England States.

PAR. 4. That the corporate name of the respondent so closely resembles that of the Hygrade Knitting Mills, described in paragraph 3 hereof, that confusion in the trade as to goods sold by respondent and the products of said Hygrade Knitting Mills has resulted; that the adoption of the corporate name, Hygrade Knitting Company, Inc., by respondent was calculated to and does mislead and deceive the purchasing public, and purchasers have been thereby induced to purchase goods sold by respondent under the mistaken belief that they were the product of said Hygrade Knitting Mills; that respondent, as a means of enabling or assisting it to pass off goods sold by it as and for the product of said Hygrade Knitting Mills, has made use of letterheads, bill heads, invoices, and other office stationery which were printed in a style and size of type and with such typographical arrangement with the word "Hygrade" displayed in large type, as to closely resemble in general appearance the stationery of said Hygrade Knitting Mills, and the letterheads of respondent have printed thereon in addition to its name and address, the following: "Manufacturers of sweaters and fancy knit goods"; while the printed matter on the letterheads of said Hygrade Knitting Mills has printed thereon in addition to its name and address the following: "Manufacturers of knit goods of quality."

PAR. 5. That since its organization the said Hygrade Knitting Mills has marketed its product in boxes or containers upon which were placed labels with the word "Hygrade" in the center in large type and the words "The sweater of quality" at one end of such label; that respondent has marketed goods sold by it in boxes or containers upon which were placed labels also with the word "Hygrade" in the center in large type and the words "Hygrade Knitting Company, Sweaters, Quality, Value, Satisfaction, Style" at the ends of such labels; that the labels so used by respondent so closely resemble the labels used by the Hygrade Knitting Mills, as aforesaid, in size, style of type, typographical arrangement of the

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printed matter, and general appearance, as to cause confusion in the trade; that the use by respondent of the labels as aforesaid, was calculated to and does mislead and deceive the purchasing public and purchasers are thereby deceived and induced to purchase goods sold by respondent, under the mistaken belief that they are the goods of the said Hygrade Knitting Mills.

PAR. 6. That by reason of the facts recited, the respondent is using 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, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon respondent, the Hygrade Knitting Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its amended answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the complaint, and on behalf of the respondent before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, 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. The respondent, the Hygrade Knitting Company, Inc., is a corporation organized on May 6, 1919, under the laws of the State of New York with principal place of business at 1 East Twenty-eighth Street, city of New York, State of New York.

PAR. 2. The respondent is engaged in the business of selling in wholesale quantities knitted outerwear, principally sweaters and scarfs for women, and causes goods sold by it to be transported from the State of New York through and into other States of the United States in interstate commerce and carries on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. On or about December 12, 1916, there was organized under the laws of the State of New Jersey the Hygrade Knitting Mills, a

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corporation with an authorized capital of \$125,000, with its principal place of business and mill at 777 South Eighteenth Street, Newark, N. J. This company manufactures knitted outerwear exclusively for women, such as sweaters and scarfs. It sells only the products produced in its own mill and manufactures only a high grade of sweaters and scarfs and by reason of the excellent quality and style of its products, has from the beginning of the year 1917 built up relatively an extensive business which in the year 1920 had reached a volume expressed in sales of \$310,000. The Hygrade Knitting Mills sells its products direct to the retailer without the intervention of jobber or wholesaler and causes the goods manufactured and sold by it to be transported from its mill in Newark, N. J., through and into other States of the United States in interstate commerce and carries on its said business in direct, active competition with other persons, firms and corporations similarly engaged.

PAR. 4. In the course of and for the extension of its business, as described in paragraph 3, the Hygrade Knitting Mills advertised its products in the *Sweater News*, a magazine devoted to the sweater trade with a large circulation among retailers throughout the United States and in said advertisements featured the word "HYGRADE"; referred to its products as "HYGRADE SHETLANDS, write for samples and be convinced that HYGRADE means high grade in every respect"; "A HYGRADE Shetland novelty"; "HYGRADE styles and coloring" (see Com. Ex. 28, 29, 30, 31, 32, 33).¹ And in order to further extend the knowledge of their products the Hygrade Knitting Mills obtained the services of one James H. Moffett as their selling representative. Moffett was well known throughout the United States among the retail purchasers of women's knitted outerwear, represented several mills, had maintained for years an office and showrooms at 303 Fifth Avenue, New York City, and had an established clientele for the purchase of superior lines of knitted products. Moffett continued to advertise the products of the Hygrade Knitting Mills in the *Sweater News*, traveled salesmen and personally called upon retailers in many larger cities, and during the two and one-half years of his connection with the Hygrade Knitting Mills caused their sweaters and scarfs to become extensively known among retailers in all the larger cities from San Francisco to Maine. On January 1, 1921, Moffett's services were discontinued and the Hygrade Knitting Mills opened up a showroom for its own exclusive use at 347 Fifth Avenue, New York City, continued to advertise its products in the *Sweater News* and traveled salesmen so that the

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sweaters and scarfs, the products of Hygrade Knitting Mills, became known and understood, referred to and designated by retailers and even by the ultimate purchasers as "Hygrade"; "Hygrade Sweaters"; "The Hygrade is what I want"; "Give me a Hygrade sweater." A buyer of twelve years' experience testified "there was only one Hygrade to me and I thought there was only one Hygrade—that was the Hygrade Knitting Mills. The affix 'mills' or 'company' was not valuable to me. We always termed them (referring to makes of sweaters) as Mengart or Hygrade or Sterling."

PAR. 5. The respondent, Hygrade Knitting Company, began business in 1919 approximately two and one-half years after the Hygrade Knitting Mills. The respondent operates no mill or machinery, but puts out to contractors the women's outerwear, principally sweaters and scarfs, which it sells. These articles so manufactured are sold by the respondent to retailers and jobbers, 95% of its sales being to retailers and 5% to jobbers. The respondent travels salesmen who call upon retailers throughout a large part of the United States and advertises by circulars mailed direct to retailers and in trade papers. The business of the respondent was approximately for 1919, \$280,000; 1920, \$400,000; half of 1921, \$250,000.

PAR. 6. The respondent puts its sweaters up in boxes upon the end of which boxes is a label, in the center of which appears in capital letters the word "HYGRADE" with the center of the letters cut out and superimposed thereon the words "Knitted Novelties." To the left of this center design, enclosed within a circle, is a shield supported by lambs rampant, the shield bearing the words "Hygrade Knitting Company, Inc., sweaters," and upon the right of said center design a double circle with the words "QUALITY—VALUE—SATISFACTION—STYLE" (Com. Ex. 24).¹ This label later was somewhat changed but the principal feature, the center design and the design on the left, remained the same except for a change in color. (Com. Ex. 25.)¹ The center design "HYGRADE" with the words "Knitted Novelties" superimposed was registered June 28, 1921, in the Patent Office of the United States as a trade mark No. 144,320, application for which was filed July 22, 1920 (Resp. Ex. 3).¹

The Hygrade Knitting Mills during the years 1917 and 1918 put its sweaters up in boxes to which was affixed a label having for its center design the word "HYGRADE" in yellow capitals followed by the words "the sweater of quality" in somewhat smaller capitals in blue, the whole enclosed in a yellow border with blue facings and upon the left a parallelogram with the words "Style—No. — Size" and on the right in a similar design the word "Color" with a blank

¹ Not printed.

space thereunder (Com. Ex. 4).¹ This label was discontinued after 1918 and has not since been in use and was followed by a label having for its center design the word "HYGRADE" in white letters upon a brown or chocolate colored field and under said word "HYGRADE" an oblong white parallelogram, the whole being enclosed in a blue border. To the right and left of this center design are irregular shaped designs with blue borders. The left one contains the words "Style—Size" and the right one "The sweater of quality" (Com. Ex. 3).¹ This label is now and has been in use since the year 1919.

The labels of the respondent are quite dissimilar in style of type, design and typographical arrangement from the labels of the Hygrade Knitting Mills, the only point of similarity being the use by each of the word "HYGRADE."

The letter heads, billheads and stationery of the respondent is likewise quite dissimilar in style and size of type, design and typographical arrangement to the stationery of its competitor, the only point of similarity being the use by each of the word "HYGRADE."

PAR. 7. The use of the word "Hygrade" by both respondent and its competitor caused confusion. Salesmen of the respondent were confused by retailers with salesmen of the Hygrade Knitting Mills. Orders were placed with the respondent, the Hygrade Knitting Company, when same were intended to be placed with the Hygrade Knitting Mills. Mail intended for the one was delivered to the other. Orders for sweaters were given by retailers to the respondent, the Hygrade Knitting Company, under the mistaken belief that said orders were being placed with the Hygrade Knitting Mills and upon receipt of the sweaters the retailers, finding they did not come up in style or quality to the goods of the Hygrade Knitting Mills to which they had been accustomed, returned the sweaters to the Hygrade Knitting Mills, Newark, N. J., still under the mistaken belief that the goods had been shipped to them by the said Hygrade Knitting Mills when in truth and in fact the goods had been shipped by the respondent.

On other occasions goods intended for the Hygrade Knitting Mills for delivery at their storerooms in New York City, were addressed "Hygrade Knitting Mills, 1 East Twenty-eighth Street, New York, N. Y.," and were delivered to and accepted by the respondent, the Hygrade Knitting Company, 1 East Twenty-eighth Street, New York City.

PAR. 8. The word "Hygrade" is frequently found as the first word of the corporate or trade name of business organizations. The telephone directory of the cities of Pittsburgh, St. Louis, Chicago, Phila-

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delphia, Newark, Jersey City, Brooklyn, and New York show its use in 83 instances. The field of activities covered by those using the word are varied, ranging from Hygrade Art Company to Hygrade Manure Company, but in only two instances is the word found in association with the word "knitting," these being Hygrade Knitting Company, 1 East Twenty-eighth Street, New York City, and Hygrade Knitting Mills, Newark, N. J.

PAR. 9. The adoption by the respondent of the word "Hygrade" as a part of its corporate name and the use of the said word "Hygrade" as a trade-mark or brand upon the packages containing its goods and the use of said word "Hygrade" upon its letter heads, billheads and stationery, after said word "Hygrade" had acquired a secondary meaning and come to be understood by the public as designating the goods and business of a competitor, is deceptive and tends to confuse and has confused and misled the public and has caused the public to purchase the goods of the respondent under the mistaken belief that they were and are the goods of a competitor and tends to enable and has enabled the respondent to pass off its goods as and for the goods of the Hygrade Knitting Mills, a competitor.

CONCLUSION.

That the practices of the respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and are a 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."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the amended answer of respondent and the testimony and evidence submitted and the Commission having made its findings as to the facts and its conclusion that respondent has violated 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,"

Now, therefore, it is ordered, That the respondent Hygrade Knitting Company, Inc., its officers, directors, agents and employees, cease and desist from using the word "Hygrade" in its corporate name or displayed upon its letter heads, stationery, circulars, advertising matter or in its trade-marks, trade names, labels or devices,

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in connection with the sale in interstate commerce of its sweaters or scarfs or upon cartons or containers in which its sweaters or scarfs are packed.

And it is further ordered, That the respondent shall file with the Federal Trade Commission within ninety (90) days from the date of this order its report in writing, stating the manner and form in which this order has been conformed to and shall attach to said report two copies of all circulars, stationery, advertisements, trade names, trade-marks, devices or labels distributed or displayed to the public by respondent in connection with the sale of its products in interstate commerce subsequent to the date of this order.

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FEDERAL TRADE COMMISSION DECISIONS.

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PAUL BALME, TRADING UNDER THE NAME AND STYLE
OF B. PAUL.