

Complaint.

FEDERAL TRADE COMMISSION

v.

JUVENILE SHOE COMPANY, INC.

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

Docket 752—July 1, 1922.

SYLLABUS.

- Where a corporation engaged in the manufacture and sale of infants', children's and misses' shoes under the style of Juvenile Shoe Corporation of America, (1) carried on a large business under said name and so advertised at large expense in publications of nation-wide circulation and in trade journals, and (2) in so advertising featured a reproduction of a trade-mark tag attached to all shoes sold by it through its authorized distributors, and sold its shoes under a trade-mark consisting of the words "Juvenile Shoe System," displayed upon the representation of a wax seal; and thereafter a competitor dealing in inferior grades of such shoes,
- (a) Adopted the corporate name "Juvenile Shoe Co., Inc.," with the effect of confusing the trade and with a capacity and tendency to induce retail dealers to purchase its shoes as and for those of said corporation, and to induce and enable them so to sell the same to the purchasing public; and
 - (b) Packed its shoes in cartons with labels consisting of the picture of a child with the words "Juvenile" and "Shoe Co., Inc.," closely resembling in size, typographical arrangement, and general appearance said corporation's registered trade-mark and the tags attached by it to its shoes as above set forth; with a capacity and tendency to confuse the trade and to enable retail dealers to sell its shoes as and for those of said corporation to the purchasing public;

Held, That such simulation of corporate name, and such simulation of trade-mark, 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 Juvenile Shoe Company, Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation 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:

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PARAGRAPH 1. That the respondent is a corporation, organized and existing under the laws of the State of California, with principal place of business at the City of Los Angeles, in said State.

PAR. 2. That the respondent was organized on the 26th day of May, 1919, and thereafter engaged in the business of selling shoes, in interstate commerce, for children exclusively, to retail dealers in wholesale quantities, in the State of California and states adjacent thereto, and to the public in such states on mail orders, and causes the shoes sold by it to be transported to the purchasers thereof from the State of California, in and beyond said State, and carries on such business in direct, active competition with other persons, partnerships and corporations, similarly engaged.

PAR. 3. That on June 8, 1918, there was organized under the laws of the State of Missouri, the Juvenile Shoe Corporation of America, that the said corporation succeeded to the business of two other corporations which had theretofore been engaged in the business of manufacturing and selling shoes; that continuously since its incorporation said Juvenile Shoe Corporation has manufactured and sold shoes, for children exclusively, and in the various states of the United States and more particularly in California and states adjacent thereto, and has caused shoes sold by it to be transported to the purchasers thereof from the State of Missouri through and into the other said 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 Juvenile Shoe Corporation has built up an extensive business in the sale of its product in the State of California and states adjacent thereto, and the shoes manufactured and sold by it are of greater value and of superior quality and sell for higher prices than the shoes sold by respondent.

PAR. 4. That the corporate name of the respondent, the junior corporation, so nearly resembles the corporate name of the senior corporation, the Juvenile Shoe Corporation, described in Paragraph Three hereof, that the trade name or design of the respondent so nearly resembles the registered trade-mark of the Juvenile Shoe Corporation, in sight, sound and meaning, and that both the respondent and the Juvenile Shoe Corporation deal in and sell children's shoes exclusively, in competition in interstate commerce in California and States adjacent thereto are facts which are calculated to cause and have caused and are now causing confusion in the trade and have induced and are inducing purchasers of children's shoes to believe that the shoes offered for sale by the respondent are shoes manufactured and sold by the Juvenile Shoe Corporation.

PAR. 5. That since January 1, 1919, said Juvenile Shoe Corporation has continuously used a trade-mark registered by it on November 30, 1920, in the United States Patent Office, consisting of the words "Juvenile Shoe System Standard of the World," displayed upon the representation of a wax seal, and this seal was employed by the said corporation by means of a label placed upon the boxes in which shoes sold by it were packed, and by means of tags attached directly to such shoes, and such registered trade-mark and seal was also impressed by means of a die, upon the soles of shoes manufactured and so sold, in interstate commerce, by the said Juvenile Shoe Corporation.

PAR. 6. That respondent, since the adoption and use of the registered trade-mark by the Juvenile Shoe Corporation, as set out in Paragraph Five hereof, has put upon the boxes in which shoes sold by it are packed, a circular label consisting of the face of a smiling child, surrounded by the words "Juvenile Shoe Company, Inc.," which label so nearly resembles the said seal and registered trade-mark of Juvenile Shoe Corporation as to be likely to cause confusion in the trade and deceive purchasers by causing such purchasers to believe that shoes sold by respondent are shoes manufactured and sold by said Juvenile Shoe Corporation.

PAR. 7. That by reason of the facts recited the respondent, acting through its officers and members, and in their interest and behalf, 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 the Juvenile Shoe Company, Inc., hereinafter referred to as the respondent, 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 answer herein, evidence was thereupon introduced in support of the allegations of the complaint, and on behalf of the respondent before a member of the Federal Trade Commission. Thereupon this proceeding came on for final hearing, and the Commission having duly considered the complaint, the answer thereto and the evidence ad-

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duced, and being fully advised in the premises, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized on May 26, 1919, under the laws of the State of California, with principal place of business at Los Angeles in said State, and since its organization has been engaged in the business of buying and selling shoes for infants, children, and misses; that respondent purchases shoes from manufacturers in the State of Pennsylvania and in other States of the United States and causes such shoes to be transported from such States through other States to Los Angeles, Calif., where such shoes are resold by respondent to the retail trade and, on a small scale, on mail orders, direct to the consumer, and respondent causes the shoes so resold by it to be transported to the purchasers thereof, from Los Angeles in the State of California in and beyond said State, and has carried on its said business in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the authorized capital stock of respondent was originally \$25,000 which was increased to \$35,000 by proceedings had on December 29, 1919, which stock was fully paid up; that thereafter on the 25th day of January 1921 proceedings were had authorizing the further increase of the capital stock of respondent from \$35,000 to \$100,000; that there has been a steady growth in the volume of business done by respondent since its organization.

PAR. 3. That on June 8, 1918, the Juvenile Shoe Corporation of America, a corporation, was organized under the laws of the State of Missouri, and succeeded to the business of two other corporations which had theretofore been engaged in the business of manufacturing and selling shoes in due course of commerce among the States; that its authorized capital stock is \$1,000,000, \$550,000 of which is paid up and issued; that it operates plants, in which shoes for infants, children, and misses are manufactured at Beloit, Wis., at Carthage, Mo., and Aurora, Mo.; that it employs at the three plants, on an average, 350 persons; that its factory output is about 2,000 pairs of shoes per day; that it markets its product in practically all of the States of the United States through 18 jobbers located in various jobbing centers; that 16 of such jobbers are designated as "Authorized Distributors"; that the 2 jobbers not designated as "Authorized Distributors" sell shoes so distributed in plain cartons and without trademark or distinguishing tag of the Juvenile Shoe Corporation

of America, thereon; its volume of sales aggregate \$2,000,000 annually; from June 1, 1919 to December 31, 1920 it spent for advertising its product and business, the sum of \$127,623.14; that such advertising was carried in publications of nation wide circulation including the Saturday Evening Post, Good Housekeeping, Vogue, Vanity Fair, and various trade journals; that in such advertisements there was featured a reproduction of a tag which is attached to one of each pair of shoes sold through its authorized distributors, rather than the various brand names of the shoes.

PAR. 4. That the Juvenile Shoe Corporation of America, on November 20, 1920, registered in the United States Patent Office, a trade-mark for shoes manufactured and sold by it, which trade-mark consists of the words "Juvenile Shoe System," displayed upon the representation of a wax seal, which trade-mark had been used conspicuously in its business since January 1, 1919; that a tag on one side of which was a reproduction of said trade-mark with the added words "Standard of the World" and on the other side a description of the quality of the shoes is attached to one of each of the pairs of shoes sold by said Juvenile Shoe Corporation of America through its authorized distributors, which shoes are packed in cartons one pair to each carton, on which cartons are printed a brand name, namely, "Kewpie Twins," "Playhouse," "Sportwalks" etc.; that a circular is also enclosed in such cartons which bears the name of the Juvenile Shoe Corporation of America in which circular, the offer is made to rebuild the shoes, upon the payment of \$2.

PAR. 5. That the Williams-Marvin Co. with principal place of business at San Francisco, Calif., has been designated by the Juvenile Shoe Corporation of America, as its authorized distributor for the States bordering on the Pacific Coast and States adjacent thereto; that said Williams-Marvin Co. does not handle the product of the Juvenile Shoe Corporation of America, exclusively, but sells the product of various manufacturers of shoes for children, and in the year 1918 its volume of sales of the product of Juvenile Shoe Corporation of America, was \$123,448, in 1919, \$143,000, and in 1920, \$137,500.

PAR. 6. That the respondent immediately after its organization packed shoes sold by it, in cartons upon which were printed a label consisting of a picture of a child surrounded by a band in the upper part of which band was the word "Juvenile" and in the lower part of the band the words "Shoe Co., Inc." but the use of this label by respondent was abandoned long prior to November, 1920, except that remnants of stock on hand after that date were disposed of in the

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cartons so labeled, and thereafter new stock purchased and resold by respondent was marketed in plain cartons.

PAR. 7. That the shoes manufactured by the Juvenile Shoe Corporation of America, differ in method of manufacture and constituent material from the shoes sold by respondent, and are of better grade and quality and should bring higher prices in the usual course of trade.

PAR. 8. That the label used by respondent as set out in paragraph 6 hereof, closely resembled in size, typographical arrangement, and general appearance, the registered trade-mark of the Juvenile Shoe Corporation of America, and the tag attached to shoes sold by it, as set out in paragraph 4 hereof; that the appearance of such label upon cartons containing shoes sold by respondent, had the capacity and tendency to cause confusion in the trade and enable retail dealers to sell to the public, the shoes sold to such retailers by respondent, as and for the shoes of the Juvenile Shoe Corporation of America.

PAR. 9. That the use of the word "Juvenile" as a part of the corporate name of the respondent has the capacity and tendency to cause and in many instances actually has caused confusion in the trade with the name of the Juvenile Shoe Corporation of America and to induce retail dealers of shoes to purchase shoes from the respondent in the mistaken belief that respondent and the Juvenile Shoe Corporation of America were one and the same establishment, or that the respondent was a branch or subsidiary of said Juvenile Shoe Corporation of America, and to sell the same to the purchasing public as such, and the word "Juvenile" in the corporate name of the respondent, has the capacity and tendency to enable retail dealers to pass off shoes purchased by them from respondent as and for the shoes of the Juvenile Shoe Corporation of America.

CONCLUSION.

The practices of the respondent under the conditions and circumstances described in the foregoing findings as to the facts, constitute unfair methods of competition in commerce among the States, and are prohibited 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."

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 Juvenile Shoe Company, Inc., the respondent herein, and the testi-

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mony 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, the Juvenile Shoe Company, Inc., its officers, directors, agents and employees, cease and desist:

(1) From using as a part of the corporate name of the respondent the word J-U-V-E-N-I-L-E, or any word or combination of words, likely to be confused with the name of the Juvenile Shoe Corporation of America.

(2) From using, or permitting to be used, in its or their behalf, the word J-U-V-E-N-I-L-E, on its marks, labels, tags, or other devices upon, or in connection with the sale of, shoes for infants, children and misses; and from directly or indirectly suggesting by the use of a word, mark, label or otherwise, that the goods of the respondent are the goods of the Juvenile Shoe Corporation of America.

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

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FEDERAL TRADE COMMISSION DECISIONS.

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WILLIAM E. HINCH.