

Complaint.

FEDERAL TRADE COMMISSION

v.

SIMONS, HATCH & WHITTEN COMPANY.

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

Docket 770—August 17, 1922.

SYLLABUS.

Where a corporation engaged in the sale at wholesale of hosiery in competition with concerns who either correctly branded, labeled, and advertised their products with reference to composition or failed to brand, label and advertise the same at all in that respect; respectively branded, labeled, advertised and sold hosiery containing no genuine silk as "fiber silk," hosiery composed entirely of cotton as "silk lisle," and hosiery composed of cotton and wool in approximately equal proportion as "cashmere" or "wool"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

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 Simons, Hatch & Whitten Company, hereinafter referred to as 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:

PARAGRAPH 1. That respondent, Simons, Hatch & Whitten Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the City of Boston, in the State of Massachusetts, and is engaged in the business of selling hosiery at wholesale, and of causing hosiery so sold by it to be transported to the purchasers thereof from the State of Massachusetts through and into other States of the United States, and in the conduct of such business is in direct and active competition with other corporations, copartnerships and individuals similarly engaged.

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PAR. 2. That respondent, in the course of its business as described in Paragraph 1 hereof, sells hosiery, which it knows is made of an animal or vegetable fibre and contains no silk, labeled, advertised and branded "Fibre Silk," without any other word or words descriptive of the material of which the hosiery is manufactured; that respondent, in the course of its business as described in Paragraph 1 hereof, sells hosiery, which it knows is made entirely of mercerized cotton, labeled, advertised and branded "Silk Lisle," without any other word or words descriptive of the material of which the hosiery is manufactured; that respondent, in the course of its business as described in Paragraph 1 hereof, sells hosiery, which it knows is made of cotton and wool in approximately equal proportions, labeled, advertised and branded "Cashmere," without any other word or words descriptive of the materials of which the hosiery is manufactured; that respondent, in the course of its business as described in Paragraph 1 hereof, sells hosiery, which it knows is made of cotton and wool in approximately equal proportions, labeled, advertised and branded "Wool," without any other word or words descriptive of the materials of which the hosiery is manufactured; that each and all of the above described labels, advertisements and brands, when used on hosiery as above described, are false and misleading and are calculated to, and actually do, mislead and deceive the purchasing public as to the quality of such hosiery.

PAR. 3. That by reason of the facts set out in the foregoing paragraphs, the respondent is using unfair methods of competition in commerce within 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."

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, Simons, Hatch & Whitten Company, 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 in its own proper person and filed its answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, and having made, executed and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this

case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now 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. The respondent, Simons, Hatch & Whitten Company, is a corporation duly incorporated and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the City of Boston, in the State of Massachusetts.

PAR. 2. That the respondent is engaged in the business of selling hosiery at wholesale, and of causing hosiery so sold by it to be transported to the purchasers thereof from the State of Massachusetts through and into other States of the United States, and in the conduct of such business is in direct and active competition with other corporations, copartnerships and individuals similarly engaged.

PAR. 3. That respondent, in the course of its business as described in Paragraph 2 above, sells and ships hosiery which contains no true silk, which it labels, advertises and brands and so distributes in packages or containers which it labels, advertises and brands "Fibre Silk"; sells and ships hosiery made entirely of cotton which it labels, advertises and brands and distributes in packages or containers which it labels, advertises and brands "Silk Lisle"; sells and ships hosiery made of cotton and wool in approximately equal proportions which it labels, advertises and brands, and which it distributes in packages or containers which it labels, advertises and brands "Cashmere" or "Wool"; that dealers purchasing these various kinds of hosiery, labeled, advertised and branded as aforesaid, and in packages or containers labeled, advertised and branded as aforesaid, offer and sell them so labeled to the general purchasing public. That neither the said hosiery nor the boxes or packages containing it are labeled, advertised or branded with any other word or words to indicate the kind or grade of materials entering into the manufacture of said hosiery.

PAR. 4. That the words "Fibre Silk" or "Silk Lisle" when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signify and are understood by a substantial part of the purchasing public to mean hosiery which con-

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tains some proportion of true silk. That the word "Cashmere" when applied to hosiery without any other word or words descriptive of the kind or grade of materials signifies, and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of a high grade of wool; that the word "Wool," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of wool.

PAR. 5. That many of respondent's competitors in the selling of hosiery are engaged in interstate commerce, selling and shipping their goods from one state into another. That a number of such competitors have sold and shipped, and now sell and ship, in said commerce between the states, hosiery which is made entirely of silk, which hosiery, and the packages or containers of which, are labeled, advertised and branded "Silk"; that a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery, which hosiery is made entirely of twisted cotton yarns, which hosiery, and the packages or containers of which, are labeled, advertised and branded "Lisle." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery which is made entirely of high grade wool, which hosiery, and the packages or containers of which are labeled, advertised and branded "Cashmere." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery which is made entirely of wool, which hosiery, and the packages or containers of which, are labeled, advertised and branded "Wool."

PAR. 6. That a number of respondent's competitors engaged in interstate commerce, as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of an animal or vegetable fiber and containing no silk, which hosiery and the packages or containers of which are labeled, advertised, and branded with the name of the fiber or fibers of which the hosiery is composed, and with no other word or words descriptive of the materials; or are labeled, advertised, and branded with no words descriptive of the materials. That a number of respondent's competitors in interstate commerce, as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of cotton, or mercerized cotton, which hosiery, and the packages and containers of which, are labeled, advertised, and branded with no other word or words descriptive of the material except "Cotton" or "Mercerized Cotton," or are labeled, advertised, and branded with no word or words descriptive of the ma-

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terial. That a number of respondent's competitors in interstate commerce, as aforesaid, have sold, and are now selling and shipping hosiery which is made of wool and cotton in approximately equal proportions, which hosiery, and the packages or containers of which, are labeled, advertised, and branded with the words "Wool and Cotton" or with no word or words descriptive of the materials. That a number of respondent's competitors in interstate commerce, as aforesaid, have sold and shipped, and now sell and ship hosiery made of a high grade of wool and cotton in approximately equal proportions, which hosiery, and the packages or containers of which, are labeled, advertised, and branded "Cashmere and Cotton," or with no word or words descriptive of the materials.

PAR. 7. The labels or brands under which the respondent sells, advertises, and ships hosiery as set forth in the foregoing findings, tend to, and do, mislead and deceive a substantial part of the purchasing public as to the composition and materials of said hosiery; said labels or brands, as so used by respondent, cause said hosiery to compete unfairly with the goods of its competitors in interstate commerce, who, as set forth in paragraphs 5 and 6 above, sell hosiery made entirely of silk, lisle, cashmere, or wool; or hosiery made wholly or in part of other materials than those named, and labeled or branded so as to indicate the true composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

CONCLUSION.

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."

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 respondent, and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion, 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,"

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It is now ordered, That the respondent, Simons, Hatch & Whitten Company, and its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly:

I. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "silk," or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silkworm, or (2) unless, where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

II. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "cashmere," (1) unless the hosiery so labeled, branded or advertised be composed entirely of wool of a high grade, or (2) unless, when the hosiery is composed partly of cashmere it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

III. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "wool," (1) unless the hosiery so labeled, branded or advertised be composed entirely of wool, or (2) unless, when the hosiery is composed partly of wool, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

IV. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "Lisle," (1) unless the hosiery so labeled, branded or advertised be composed entirely of twisted cotton yarn, or (2) unless, when the hosiery is composed partly of twisted yarn, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

Respondent is further ordered, To file a report in writing with the Commission sixty (60) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

MORRISON & CO.

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