

FEDERAL TRADE COMMISSION

v.

CHARLES D. DAUM, THOMAS J. ROGERS AND HARRY
SPRITZER, PARTNERS, STYLING THEMSELVES THE
DAUM, ROGERS, SPRITZER COMPANY.

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

Docket 684—November 1, 1922.

SYLLABUS.

Where a firm 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; sold hosiery composed in equal proportions of cotton and silk, hosiery composed of wool and cotton in about equal proportions, and hosiery composed of wool and of an animal or vegetable fiber with a luster somewhat similar to, but containing no genuine silk, in boxes or containers respectively branded, labeled and advertised "Men's Silk Half Hose," "Cashmere Hose," and "Silk and Wool"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

Held, That the sale of goods branded, labeled and advertised as above set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Charles Daum, Thomas J. Rogers and Harry Spritzer, partners styling themselves the Daum, Rogers, Spritzer Co., hereinafter referred to as respondents, have been and are using unfair methods of competition 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 this respect on information and belief as follows:

PARAGRAPH 1. That respondents constitute a partnership and carry on business at New York, N. Y., under the firm name and style of the Daum, Rogers, Spritzer Co., and are engaged in the business of selling hosiery at wholesale, causing hosiery sold by them to be transported to the purchasers thereof from the State of New York,

Findings.

5 F. T. C.

through and into other States of the United States, and carry on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the respondents in the course of their business as described in Paragraph One hereof, make use of certain false and deceptive brands and labels which are placed upon hosiery sold by them and the boxes containing such hosiery; that among such false and deceptive labels are the following: Hosiery composed of cotton and silk so woven as to put the silk on the outside and the cotton on the inside are labeled as "Men's Silk Half Hose"; hosiery composed of mixed cotton and wool are labeled "Cashmere Hose"; hosiery composed of wool and a mixture of silk fiber, but which contain no genuine silk are labeled "silk and wool." That the use of such brands and labels as aforesaid, is calculated to and does mislead and deceive the purchasing public.

PAR. 3. That by reason of the facts recited, the respondents are 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, the Federal Trade Commission issued and served a complaint upon the respondents, Charles D. Daum, Thomas J. Rogers and Harry Spritzer, partners, styling themselves the Daum, Rogers, Spritzer Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondents having entered their appearance by their attorneys, and filed their 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 respondents 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. That the respondents, Charles D. Daum, Thomas J. Rogers and Harry Spritzer, constitute a partnership and carry on business at New York, New York, under the firm name of the Daum, Rogers, Spritzer Company.

PAR. 2. That the respondents are jobbers engaged in the business of purchasing from manufacturers and selling to retailers in the state of New York and other states of the United States, hosiery, and in causing same to be shipped and transported from the state of New York through and into other states of the United States pursuant to such sales, in competition with other copartnerships, corporations and individuals engaged in similar commerce between and among the states of the United States, and that there has been and is continuously a current of trade to and from the said respondents in said hosiery among and between the states of the United States.

PAR. 3. That until on or about April 1, 1920, the respondents, in the conduct of their business as described in Paragraph Two above, sold and shipped hosiery made of silk and cotton in equal proportions, said hosiery being packed in boxes or containers which were labeled, advertised and branded "Men's Silk Half Hose." That dealers purchasing this hosiery from respondents, packed in boxes or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words to indicate the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 4. That until on or about April 1, 1920, the respondents, in the conduct of their business as described in Paragraph Two above, sold and shipped hosiery made of wool and cotton in about equal proportions, said hosiery being packed in boxes or containers which were labeled, advertised and branded "Cashmere Hose." That dealers purchasing this hosiery from respondents, packed in boxes or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words descriptive of the character, kind or grade of material or materials entering into the manufacture of said hosiery.

Findings.

6 F. T. C.

PAR. 5. That until on or about April 1, 1920, the respondents, in the conduct of their business as described in Paragraph Two above, sold and shipped hosiery made of wool and an animal or vegetable fibre having a luster somewhat similar to true silk, but containing no true silk, said hosiery being packed in boxes or containers which were labeled, advertised and branded "Silk and Wool." That dealers purchasing this hosiery from respondents, packed in boxes or containers labeled, advertised and branded as aforesaid, offer and sell it so labeled, advertised and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled, advertised or branded with any other word or words descriptive of the character, kind or grade of material or materials entering into the manufacture of said hosiery.

PAR. 6. That the hosiery, above referred to and heretofore sold by the Daum, Rogers, Spritzer Co., was bought by them from manufacturers who themselves labeled, advertised and branded the hosiery sold by the Daum, Rogers, Spritzer Company without authorization or direction from the said Daum, Rogers, Spritzer Co. That the said Daum, Rogers, Spritzer Co. had nothing to do with the manufacturing, packing or labeling of the said hosiery, but bought and subsequently sold the hosiery thus manufactured, packed, labeled, advertised and branded.

PAR. 7. That the term "Men's Silk Half Hose," 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 made entirely of material derived from the cocoon of the silk worm. That the term "Cashmere Hose," when applied to hosiery without any other word or words descriptive of the kind or grade of material, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of a high grade wool. That the term "Silk and Wool," when applied to hosiery without any other word or words descriptive of the kind or grade of material, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made of material derived from the cocoon of the silk worm, and wool.

PAR. 8. That many of respondents' 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 "Mens' Silk Half Hose." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery made entirely of a high-grade wool, which hosiery and the packages or containers of which are labeled, advertised and branded "Cashmere Hose." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the states, hosiery, made of material derived from the cocoon of the silk worm, and wool in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded "Silk and Wool."

PAR. 9. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped and now sell and ship, hosiery which is made of material derived from the cocoon of the silk worm, and cotton in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded with no word or words descriptive of the material or materials entering into the manufacture of said hosiery. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery made of material derived from the cocoon of the silk worm, and cotton in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded with the words "Silk and Cotton" or "Silk and Lisle."

PAR. 10. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship hosiery which is made of wool and cotton in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded with no word or words descriptive of the material or materials entering into the manufacture of said hosiery. That a number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of wool and cotton in about equal proportions, which hosiery and the package or containers of which are labeled, advertised and branded with the words "Wool and Cotton."

PAR. 11. That a number of respondents' competitors engaged in interstate commerce as aforesaid, have sold and shipped and now sell and ship, hosiery which is made of material derived from the cocoon of the silk worm and wool in about equal proportions which hosiery and the packages or containers of which are labeled, advertised and branded with no word or words descriptive of the material or materials entering into the manufacture of said hosiery. That a

Order.

5 F. T. C.

number of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped and now sell and ship hosiery which is made of material derived from the cocoon of the silk worm, and wool in about equal proportions, which hosiery and the packages or containers of which are labeled, advertised and branded with the words "Silk and Wool."

PAR. 12. The labels or brands under which the respondents sell and ship 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 their competitors in interstate commerce, who, as set forth in paragraphs 7, 8, 9 and 10 above, sell hosiery made wholly of silk, cotton, cashmere or wool; or hosiery made entirely 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 respondents, 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 respondents, and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion, that the respondents have 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 is now ordered, That the respondents, Charles D. Daum, Thomas J. Rogers and Harry Spritzer, partners, styling themselves the Daum, Rogers, Spritzer 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 them, 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 silk worm, 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 them 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 wool of a high grade, 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 them or on the containers thereof, or in advertisements thereof, the words "silk and wool" (1) unless the hosiery so labeled, branded or advertised be composed entirely of wool and material derived from the cocoon of the silk worm or (2) unless, where the hosiery is composed of wool, and material derived from the cocoon of the silk worm, and some other staple or staples, 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.

Respondents are 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.

264

FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

5 F. T. C.

FEDERAL TRADE COMMISSION

v.

ROCKFORD MITTEN & HOSIERY COMPANY.