

Complaint.

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FEDERAL TRADE COMMISSION.

v.

NOLDE & HORST COMPANY.

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

Docket 679—November 14, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale 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; branded, labeled, advertised and sold hosiery composed of cotton and wool as "Worsted," "Fine Wool," "Merino," "Natural Wool," and "Cashmere," 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 the Nolde & Horst Company, hereinafter referred to as respondent, has been and is 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 the respondent is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business in the City of Reading, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling hosiery, and causes hosiery sold by it to be transported to the purchasers thereof, from the State of Pennsylvania, 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 respondent in the course of its business as described in paragraph 2 hereof, places upon hosiery sold by it, and upon the boxes in which hosiery is packed and in which boxes the hosiery is eventually exhibited to the purchasing public by the retail dealers, certain

false and misleading labels; that upon hosiery so sold by respondent made of mixed cotton and wool, and upon the boxes containing same, respondent places or causes to be placed labels, among which are the following, viz: "Worsted," "Fine Wool," "Merino," "All Wool," "Natural Wool" and "Cashmere;" which labels are false and misleading and are calculated to and do mislead and deceive the purchasing public.

PAR. 4. 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, the Federal Trade Commission issued and served a complaint upon the respondent, Nolde & Horst 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. That the respondent, the Nolde & Horst Company, is a corporation duly organized, and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business in the City of Reading, in said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling hosiery at wholesale, in the State of Pennsylvania and in other States of the United States, causing same to be shipped and transported from the State of Pennsylvania through and into other States of the United States pursuant to such sales,

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in competition with other corporations, copartnerships 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 respondent in said hosiery among and between the States of the United States.

PAR. 3. That the respondent until it learned of this investigation by the Commission, about June 1, 1920, in the conduct of its business as described in Paragraph 2 above, sold and shipped hosiery which it knew was made of mixed cotton and wool, labeled, advertised and branded, and in packages or containers labeled, advertised and branded "Worsted," and "Fine Wool," and "Merino" and "Natural Wool" and "Cashmere." That dealers purchasing this hosiery from respondent, 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 boxes 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 the word "Worsted" means primarily and popularly a yarn and fabric made wholly of wool and when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of wool. That the term "Fine Wool," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of wool. That the word "Merino" as applied to wool means primarily and popularly a fine long-staple wool which commands the highest price, and when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of a high-grade wool. That the term "Natural Wool," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of wool. That the word "Cashmere," when applied to hosiery without any other word or words descriptive of the character, kind or grade of material or materials, is understood by the general purchasing public to mean hosiery which is made entirely of a high-grade wool.

PAR. 5. That many of respondent's competitors are engaged in the sale of hosiery to persons in States other than those in which their

principal factories and places of business are located, and in causing hosiery so sold to be transported from the States in which their principal factories or places of business are located through and into other States of the United States, pursuant to such sales. That many such competitors, prior to June 1, 1920, sold and shipped and are now selling and shipping, in said commerce between the States of the United States, hosiery which is made entirely of a high-grade wool, which hosiery and the packages or containers for which are labeled, advertised and branded "Merino" and "Cashmere." That many such competitors, prior to June 1, 1920, sold and shipped and are now selling and shipping, in said commerce between the States of the United States, hosiery which is made entirely of wool, which hosiery and the packages or containers for which are labeled, advertised and branded "Worsted" and "Fine Wool" and "Natural Wool."

PAR. 6. That many of respondent's competitors, in the course of commerce between the States as described in Paragraph 5 above, prior to about June 1, 1920, sold and shipped and are now selling and shipping hosiery, which is made of mixed cotton and wool, which hosiery and the packages or containers for which are labeled, advertised and branded with no word or words descriptive of the material or materials entering into the manufacture of such hosiery. That many of respondent's competitors, prior to about June 1, 1920, sold and shipped and are now selling and shipping, in the course of commerce between the States as described in Paragraph 5 above, hosiery which is made of mixed cotton and wool, and the labels, advertisements and brands on which and the packages or containers for which contain the words "Wool and Cotton," or the words "Worsted and Cotton," or the words "Merino and Cotton."

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 of materials of said hosiery; said labels or brands as so used by respondent cause said hosiery to compete unfairly with goods of its competitors in interstate commerce, who, as set forth in paragraphs 5 and 6 above, sell hosiery made entirely of wool, or hosiery made wholly or in part of other materials than those named, labeled and branded so as to indicate the true composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

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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,"

It is now ordered, That the respondent, Nolde & Horst 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 "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.

II. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "Worsted" (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.

III. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "Merino" (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 merino 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 words "Natural

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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.

V. 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.

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.

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FEDERAL TRADE COMMISSION DECISIONS.

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