

FEDERAL TRADE COMMISSION

v.

MELVIN BEHREND AND LEOPOLD BEHREND, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF BEHREND'S.

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

Docket 845—December 16, 1922.

SYLLABUS.

Where a firm engaged in retailing dry goods, notions, blankets, comforts and general wearing apparel, advertised comforts, the covers of which contained no silk, but were composed entirely of mercerized cotton, as "silkolene covered comforts," with the effect of deceiving and misleading a substantial part of the purchasing public into believing that the coverings contained some silk; to the injury of competitors dealing in comforts with coverings composed wholly of silk and in those composed partly of silk and partly of cotton, and truthfully named, advertised and labeled:

Held, That such false and misleading advertising, under the circumstances 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, Melvin Behrend and Leopold Behrend, copartners, doing business under the firm name and style of Behrend's, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce within the District of Columbia 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 to the Commission 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 respondents, Melvin Behrend and Leopold Behrend, are copartners, doing business under the firm name and style of Behrend's, and are now and for more than one year last past have been engaged in selling, at retail, dry goods, notions, blankets, and general wearing apparel for men and women, at their store and principal place of business located at 720-724 Seventh Street, Northwest, in the City of Washington, District of Columbia, to customers located throughout said District and territory adjacent

Findings.

5 F. T. C.

thereto in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondents in the conduct of their business in commerce aforesaid caused to be inserted and displayed on the 28th day of January, 1921, in the "Washington Star," a newspaper of general circulation throughout the District of Columbia, an advertisement in which they held out and offered for sale to the general public certain "SILKOLINE COVERED COMFORTS" and certain blankets of "SUPERIOR WOOL FINISH"; that the material of which said comforts were made was composed wholly of a highly mercerized cotton containing no silk whatsoever and the material of which said blankets were made was composed entirely of cotton containing no wool whatsoever; that said advertisement had the capacity and tendency to and did deceive the purchasing public as to the quality and value of said comforts and blankets and to mislead them into the belief that said comforts were composed either wholly or in part of silk and that said blankets were composed either wholly or in part of wool and the further effect of such false and misleading advertising has been and is to unduly hinder and injure competitors of the respondents who advertise and sell comforts covered with a fabric composed wholly or in part of silk, and blankets made wholly or in part of wool.

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, 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 respondents, Melvin Behrend and Leopold Behrend, copartners, doing business under the firm name and style of Behrend's, charging such respondents with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearance and filed their answer herein, hearings were had and evidence was thereupon introduced in support of the complaint and the answer before an

examiner of the Federal Trade Commission theretofore duly appointed, and the respondents having waived the presentation of oral argument and the filing of briefs, the proceeding thereupon came on for final determination by the Commission, 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 respondents, Melvin Behrend and Leopold Behrend, [are] copartners, doing business under the firm name and style of Behrend's and are now and for many years prior to October 11, 1921, have been engaged in selling at retail dry goods, notions, blankets, comforts and general wearing apparel for men and women from their store and principal place of business, 720-724 Seventh Street, N. W., Washington, District of Columbia, to customers located throughout said District in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. The respondents in the conduct of their business in commerce in the District of Columbia caused to be inserted and displayed on the twenty-eighth day of January, 1921, in the Washington Star, a newspaper of general circulation throughout the District of Columbia, an advertisement in which said advertisement among other things appeared the following language:

"An exceptionally warm comfortable covering these cold nights. Beautifully colored block plaids, white, tan and gray with pink and blue borders and very heavy extra size gray blankets. All of superior wool finish and weighing from 4 to 5 pounds. Included in the lot are about 30 silk-line Covered Comforts of extra size. Regular at \$5.98 but added to the lot for quick clearance. \$3.98 "

(Com. Ex. 1.)

PAR. 3. The blankets so advertised and offered for sale to the public were not composed of wool but were all cotton and contained no wool. The words "wool finish" as used in the advertisement are synonymous with wool nap and do not mean and are not understood to mean that the blankets contain any wool but are used to indicate simply the finish of the blankets, namely, that the short fibres on the surface resemble the surface of a wool blanket, and upon each

Findings.

5 F. T. C.

blanket there was a label 5 1/2 x 3 1/4 inches in plain bold clear type reading:

"NASHUA
WOOLNAP
Trade mark Reg. U. S. Pat. Off.
PURE COTTON
X X X
Made by
Nashua Mfg. Co.
Nashua, N. H.
U. S. A."

(Com. Ex. 2.)

PAR. 4. The "Silkoline Covered Comforts" advertised as hereinbefore set forth contained absolutely no silk in the covering material but said covering material was composed entirely of cotton which had been mercerized, that is, treated with caustic soda or potash so as to increase its color-absorbing qualities and impart to it a silky gloss.

"Silkoline" is a coined word which was thirty years or more ago designated and applied as the name of this particular cotton fabric by the manufacturers thereof; and for thirty years at least this particular mercerized cotton fabric has been labeled "Silkoline," sold by manufacturers to wholesalers as "Silkoline," and by wholesalers to retailers as "Silkoline" and by retailers throughout the United States advertised and sold to the purchasing public as "Silkoline"; and "Silkoline" has become and is the name of this particular mercerized fabric.

PAR. 5. The mercerized cotton fabric known as "Silkoline" is used for interior room draperies, covering for comforts and ornamental pillows and to some extent for linings and costumes for transient use such as fancy dress dances, and private theatricals; but is never used as dress goods. The fabric is made in several grades some being more highly mercerized than others and therefore bearing a greater resemblance in its appearance to silk. It is a comparatively cheap fabric selling in pre-war periods at from eight to fifteen cents and at present ranging from fifteen to thirty cents per yard.

PAR. 6. The word "Silkoline" as applied to the mercerized cotton fabric for which it has become the name is literally and palpably false. The fabric contains absolutely no silk and the use of said word in advertising and as a label or description has the capacity and tendency to mislead and deceive the purchasing public and has misled and deceived a substantial proportion of the purchasing public

303

Order.

into the belief that the fabric named, styled and advertised as "Silkoline" contains some silk when in truth and in fact said fabric is composed wholly of cotton.

PAR. 7. The sale of "Silkoline Covered Comforts" competes in the District of Columbia with comforts covered with all silk and comforts covered with material which contains part silk and part cotton and the advertising and sale of goods misbranded and misnamed attracts customers, and trade is thereby diverted from truthfully advertised, named and labeled goods.

CONCLUSION.

That the advertisement of the respondents in so far as the wool finished blankets are concerned was not an unfair method of competition in commerce as the label upon each of said blankets clearly and distinctly sets forth the fact that said blankets were composed of "pure cotton."

That the practice of the respondents in advertising "Silkoline Covered Comforts" was under the facts and circumstances set forth above an unfair method of competition in commerce and a 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."

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, the testimony and the evidence, the trial examiner's report upon the facts, and the Commission having made its findings as to the facts and its conclusion that the respondents have 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 respondents Melvin Behrend and Leopold Behrend, copartners, trading under the firm name and style of Behrend's, their agents and employees cease and desist from directly or indirectly:

Causing advertisements to be published in newspapers or from making use of other forms of advertising matter as a means of bringing to the attention of the purchasing public "Silkoline Covered Comforts" offered for sale or sold by said respondents in the District of Columbia without clearly and distinctly bringing to the attention of the purchasing public that the fabric termed "Silkoline" contains no silk.

Order.

5 F. T. C.

From publishing or causing to be published in newspapers circulated in the District of Columbia advertisements in which a fabric composed entirely of mercerized cotton is described and offered to the purchasing public as "Silkoline" unless said word "Silkoline" is accompanied by a word or words clearly designating the substances, fiber or material of which the said fabric is composed.

And it is further ordered, That the respondents shall file with the Federal Trade Commission within sixty (60) days from the date of the service 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 advertisements distributed or displayed to the public by respondents in connection with the sale of "Silkoline Covered Comforts" or mercerized cotton fabrics described or offered as "Silkoline" in commerce subsequent to the date of this order.

Complaint.

FEDERAL TRADE COMMISSION.

2.

JOSEPH KAHN, JACOB FRANK, AND JEROME FRANK,
PARTNERS, STYLING THEMSELVES AS KAHN &
FRANK.

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

Docket 682—December 19, 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 of cotton and of an animal or vegetable fiber, but containing no true silk, in packages or containers branded or labeled "Ladies Silk Boot Hose" or "Ladies Art Silk Hose"; 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 Joseph Kahn, Jacob Frank and Jerome Frank, partners styling themselves Kahn & Frank, 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 Kahn & Frank, 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, 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 respondents in the course of their business as described in Paragraph One hereof, sell hosiery made of cotton and

Findings.

5 F. T. C.

artificial silk, but which contains no genuine silk, which hosiery and the boxes in which such hosiery are offered for sale to the purchasing public by the retail dealer, have placed thereon, false and deceptive labels, among which are the following: "Ladies' Silk Boot Hose" and "Ladies Art Silk Hose"; which labels are false and misleading and are calculated to and do 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, Joseph Kahn, Jacob Frank, and Jerome Frank, partners, styling themselves as Kahn & Frank, 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 in their own proper persons and filed their answer herein, admitting all the allegations of the complaint and each count and paragraphs 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, Joseph Kahn, Jacob Frank, and Jerome Frank constitute a partnership and carry on business at New York, New York, under the firm name and style of Kahn & Frank.

PAR. 2. That the respondents are engaged in the business of selling at wholesale in the State of New York and in other States of the United States, hosiery, and in causing the 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 individuals, copartnerships, and corporations 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 said respondents in said hosiery among and between the States of the United States.

PAR. 3. That the respondents in the course of their business as described in paragraph 2 above, prior to the commencement of this proceeding by the Federal Trade Commission, sold and shipped hosiery made of cotton and an animal or vegetable fiber, and containing no true silk, in packages or containers labeled and branded "Ladies' Silk Boot Hose." That dealers purchasing this hosiery from respondents or from respondents' customers labeled and branded, or in packages or containers labeled and branded as aforesaid, offer and sell it so labeled and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled or branded with any other word or words to indicate the character, kind or grade of material entering into the manufacture of said hosiery.

PAR. 4. That the respondents in the course of their business as described in paragraph 2 above, prior to the commencement of this proceeding by the Federal Trade Commission, sold and shipped hosiery made of cotton and an animal or vegetable fiber, and containing no true silk, labeled and branded or in packages or containers labeled and branded "Ladies' Art Silk Hose." That dealers purchasing this hosiery from respondents or from respondents' customers labeled and branded, or in packages or containers labeled and branded as aforesaid, offer and sell it so labeled and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled or branded with any other word or words to indicate the character, kind or grade of material entering into the manufacture of said hosiery.

PAR. 5. That the term "Silk Boot 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 material derived from the cocoon of the silk worm. That the term "Art Silk 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 which is made entirely of material derived from the cocoon of the silk worm.

Conclusion.

5 F. T. C.

PAR. 6. 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 many such competitors 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 "Ladies' Silk Boot Hose." That many such competitors sold and shipped, and now sell and ship in commerce between the States, hosiery, which hosiery is made entirely of material derived from the cocoon of the silk worm, which hosiery and the packages or containers of which are labeled, advertised and branded "Silk Hose."

PAR. 7. That many 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 true silk, and cotton, 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 many of respondents' 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 true silk, and cotton, which hosiery and the packages or containers of which are labeled, advertised and branded with the words "Artificial Silk and Cotton" or "Fiber Silk and Cotton."

PAR. 8. 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 respondents, cause said hosiery to compete unfairly with the goods of their competitors in interstate commerce, who, as set forth in paragraphs 6 and 7 above, sell hosiery made entirely of silk; 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 respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of

309

Order.

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 answers 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, Joseph Kahn, Jacob Frank and Jerome Frank, partners, styling themselves as Kahn & Frank, and their officers, agents, representatives, servants and employees, cease and desist from directly or indirectly 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.

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.

314

FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

5 F. T. C.

FEDERAL TRADE COMMISSION