

Complaint.

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FEDERAL TRADE COMMISSION

v.

JOHN BENE & SONS, INC.

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

Docket 584—December 27, 1922.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of hydrogen peroxide sent to customers of a competitor certificates of analyses of said competitor's product which it had caused to be made together with comment thereon falsely and deceptively representing said product as injurious to the body and as a "solution of calcium hypochlorite or as it is usually known bleaching powder" and otherwise misrepresenting the same; with the result that customers of said competitor discontinued purchasing of him:

Held, That such misrepresentation and disparagement of the product of a competitor, 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 John Bene & Sons, Inc., hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce, 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 that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, John Bene & Sons, Inc. is and at all times hereinafter mentioned, was a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the borough of Brooklyn, City of New York, State of New York; now and for more than two years last past engaged in the compounding and sale of hydrogen peroxide and in the shipment thereof, from its place of business in the borough of Brooklyn, City of New York, State of New York, to purchasers thereof, located in other states of the United States and in the District of Columbia, in direct competition with other persons, firms and corporations engaged in the sale and shipment of similar products, in interstate commerce as aforesaid.

PAR. 2. That respondent, within two years last past in the conduct of its business of selling hydrogen peroxide as aforesaid, purchased or procured from a 5 and 10 cent chain store syndicate, a competitor's product or bottle containing said respondent's product, and submitted said competitor's product to a certain chemical laboratory located in the City of New York, State of New York, for chemical analysis thereof, and report or opinion concerning the substance and effect of said competitor's product; that respondent received from said chemical laboratory, during the month of November 1918, a chemical analysis of said competitor's product, together with report of opinion concerning the substance and effect of said competitor's product; that the substance and effect of said chemical analysis and report or opinion concerning said competitor's product was that said competitor's product is a solution of calcium hypochlorite, or as it is usually known, bleaching powder containing lime; and that the use of said competitor's product on the human body would be attended with great danger.

PAR. 3. That respondent, within two years last past, in the conduct of its business of selling hydrogen peroxide as aforesaid, purchased from a 5 and 10 cent chain store syndicate, a competitor's product or bottle, containing said competitor's product and submitted said competitor's product to a certain chemical laboratory located in the City of New York, State of New York, for chemical analysis thereof, and report or opinion concerning the substance and effect of said competitor's product; that respondent received from said chemical laboratory, during the month of December, 1918, a chemical analysis of said competitor's product, together with report or opinion concerning the substance and effect of said competitor's product; that the substance and effect of said chemical analysis and report or opinion concerning said competitor's product was that said competitor's product contained lime and was a very dilute solution of sodium hypochlorite with a very small amount of calcium hypochlorite or bleaching powder, and organic matter or compound, the nature of which could not be determined.

PAR. 4. That respondent in the conduct of its business of selling hydrogen peroxide as aforesaid, forwarded to and circulated among 5 and 10 cent chain store syndicates, customers of its said competitor—the aforesaid analyses and reports or opinions, or copies of said analyses and reports and opinions concerning said competitor's product, procured and obtained from the aforesaid chemical laboratories by respondent as aforesaid; that respondent, in the conduct of its business of selling hydrogen peroxide as aforesaid, wrote or caused to be written and forwarded to 5 and 10 cent chain store

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syndicates—customers of its said competitor—letters disparaging and belittling said competitor's product and concerning and commenting upon the aforesaid analyses and reports or opinions of said chemical laboratories, procured and obtained by respondent as aforesaid.

PAR. 5. That the said chemical analyses of said competitor's product, made by the said chemical laboratories as aforesaid, and the said reports or opinions made by the said chemical laboratories concerning the substance and effect of said competitor's product as aforesaid, contain certain false and misleading statements and representations concerning said competitor's product; that among such false and misleading statements and representations are statements and representations to the effect that said competitor's product contained lime, and that the use of said competitor's product on the human body would be attended with great danger.

PAR. 6. That the said analyses and reports or opinions, or copies of said analyses and reports or opinions of said competitor's product, forwarded to and circulated among customers of said competitor, by respondent as aforesaid, and the said letters concerning, commenting upon, belittling and disparaging said competitor's product, written, published and forwarded to and circulated among customers of said competitor by respondent as aforesaid contain certain false and misleading statements and representations concerning said competitor's product and alleged injury, which the public might derive from trading with said competitor; that among such false and misleading statements and representations, are statements and representations to the effect that said competitor's product contained lime; that the use of said competitor's product on the human body would be attended with great danger; that said competitor's product was a weak solution of bleaching powder known as a disinfectant and lost its effectiveness in about 72 hours; wherein, in truth and in fact, said competitor's product does not contain lime and wherein, in truth and in fact, the use of said competitor's product on the human body would not be attended with great danger; and wherein, in truth and in fact, said competitor's product is not a weak solution of bleaching powder that loses its effectiveness in 72 hours; that in truth and in fact even though said competitor's product contained the small amount of lime as indicated in the analyses caused to be made by respondent, it would be entirely innocuous, and would be attended with no danger to the human body.

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, John Bene & Sons, Inc., charging it with unfair methods of competition in commerce in violation of the provisions of said Act. The respondent, John Bene & Sons, Inc., entered its appearance by its attorney W. R. Redmond, and having filed its 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 thereupon this proceeding came on for final hearing and the Commission having heard argument of counsel and 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. John Bene & Sons, Inc., are a corporation existing under the laws of the State of New York, with its principal office and place of business at 437 Carlton Avenue, Brooklyn, New York, the officers of the said corporation being John Bene, President, Edward George Bene, Vice President, John Raymond Bene, Secretary.

PAR. 2. John Bene & Sons, Inc., the respondents, are now, and for 32 years have been, engaged in the manufacture and sale of hydrogen peroxide and in the shipment thereof from its place of business in the city of Brooklyn, State of New York, to purchasers thereof located in other states of the United States, in direct competition with other persons, firms and corporations engaged in the manufacture, sale and shipment of similar products.

PAR. 3. Hydrogen peroxide is sold as an antiseptic and has for more than two years last past been sold by the respondent to wholesale druggists and to chain stores commonly known as 5 and 10 cent stores, and particularly to S. S. Kresge & Company, whose principal office is located in Detroit, Michigan, operating a chain of 198 stores located in various states of the United States; also to the McCrory Stores Corporation whose principal buying office is located in the city of New York, and who operate chain stores in various states of the United States; also to S. H. Kress & Company, whose principal purchasing office is located in New York City, and who operate a chain of 148 stores in various states of the United States; and to a chain of stores commonly known as the Woolworth Stores.

PAR. 4. On or about the year 1916, Nathan Proper, under the name and style of "Proper Antiseptic laboratory, 2000 West Avenue, Cincinnati, Ohio," began the manufacture or compounding of an antiseptic preparation which was offered for sale under the name of "DAXOL," and sold and shipped from Cincinnati, Ohio, into and through various states of the United States its said preparation

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"DAXOL," and in particular sold and shipped the aforesaid preparation direct from Cincinnati, Ohio, to the stores controlled and operated by S. S. Kresge and Company, McCrory Stores Corporation, S. H. Kress and Company, and Woolworth Stores, located in the various states of the United States, in direct competition with respondent's product hydrogen peroxide, and by the end of December 1918, had built up a business of between five and six thousand dollars per annum.

PAR. 5. On or about the middle of November, John Bene, the president of the respondent company caused to be purchased from one of the chain stores above set forth, a bottle of the preparation known and sold under the name of "DAXOL," which said preparation he caused to be analyzed by the Stillwell Laboratories, Inc., 76½ Pine Street, New York City, and under date of November 19, 1918, received from the said Stillwell Laboratories, Inc., a certificate of analysis reading as follows:

Certificate of analysis of a sample of disinfectant marked "Daxol" received from John Bene & Sons, Inc., 11/18/18.

Hydrogen peroxide.....	None.
Available chlorine	0.11%
Lime	Present.
Iodine compound.....	None.

This is a solution of calcium hypochlorite or what is usually known as bleaching powder. It is our opinion that its use on the human body would be attended with great danger.

THE STILLWELL LABORATORIES, INC.,
ERNEST C. MOFFETT.

Upon receipt of said certificate of analysis, the said respondent caused copies thereof to be made and mailed same to the principal offices of the four large chain stores set forth in paragraph three, and accompanied said copies of the certificate of analysis with letters, in which said letters the attention of the managers or purchasing agents of the respective chain stores was called to the fact that "Daxol" was on sale in their stores, and that an analysis of the same might be of interest to said managers or purchasing agents.

PAR. 6. The accuracy of the analysis made by the Stillwell laboratories, Inc., having been questioned, the respondent on or about December 4, 1918, caused an analysis to be made by Stillwell and Gladding, Inc., of 95-97 Front Street, New York City, and received from the said Stillwell and Gladding, Inc., a certificate of analysis reading as follows:

Certificate of analysis of a sample of "DISINFECTANT" marked "DAXOL" received from John Bene, December 4, 1918,

Reaction.....	Neutral.
Specific gravity at 25°C.....	1.001
Magnesia	Trace.
Free Chlorine.....	0.070%
Total solids	0.350%
Lime	0.005%
Organic matter (loss on heating).....	0.262

We find that this is a very dilute solution of sodium hypochlorite, with a very small amount of calcium hypochlorite (bleaching powder), and some organic compounds, the nature of which could not be determined.

STILLWELL AND GLADDING.

Upon receipt of the above analysis, and on December 24, 1918, the respondent forwarded a copy of same to the McCrory Stores Corporation, 621 Broadway, New York City, with a letter, in which letter the respondent stated:

It appears from both the analyses that it is a very weak solution of Bleaching Powder. Solutions of bleaching powder when freshly made up have been known as a disinfectant for a good many years, but lose their effect in about 72 hours. This you can easily ascertain by asking any chemist or doctor.

PAR. 7. Upon receipt of the analyses so circulated by the respondent, the managers or purchasing agents of the aforesaid four large chain stores, withdrew from sale in their stores the preparation known as "DAXOL," and shortly thereafter ceased to purchase from the Proper Antiseptic Laboratories of Cincinnati, the preparation "DAXOL."

PAR. 8. As a direct result of the circulation by the respondent of the certificates of the aforesaid analyses, and the statements thereon, the customers of the Proper Antiseptic Laboratories were deceived and misled into the belief that the competitor's product "Daxol" contained lime; that the use of the said product on the human body would be attended with great danger; that said product was a weak solution and lost its effectiveness in about 72 hours, whereas, in truth and in fact said competitor's product "Daxol" contains either no lime or lime in such small quantities as to be entirely innocuous; and whereas in truth and in fact the use of said competitor's product "Daxol" on the human body would not be attended with great danger; and whereas in truth and in fact said competitor's product "Daxol" is not a weak solution of bleaching powder, and does not lose its effectiveness in 72 hours.

PAR. 9. The statement so circulated by the respondent of and concerning the competitive product "Daxol," "It is our opinion

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that its use on the human body would be attended with great danger," is false; the further statement contained in the certificate of analysis so circulated by the respondent "this is a solution of calcium hypochlorite or as it is usually known bleaching powder," is misleading, deceptive, and a misrepresentation of a competitor's product.

CONCLUSION.

That 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, and 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 pleadings, and the testimony and evidence received by an examiner duly appointed by the Commission and the argument of counsel for the Commission and brief of the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated 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," which said report is hereby referred to and made a part hereof, now, therefore:

It is ordered, That the respondent, John Bene & Sons, Inc., its officers, agents, representatives and employes do cease and desist from directly or indirectly publishing, circulating, or causing to be published or circulated any false, deceptive, or misleading statements of or concerning the product of a competitor, and particularly from publishing, circulating, or causing to be published or circulated, directly or indirectly, such statements concerning the product "Daxol" manufactured by the Proper Antiseptic Laboratories of Cincinnati, Ohio, to wit:

That "This is a solution of calcium hypochlorite or as it is usually known, bleaching powder. It is our opinion that its use on the human body would be attended with great danger."

That "'Daxol' is a very weak solution of bleaching powder and loses its effect in about 72 hours."

It is further ordered, That the respondent, within thirty (30) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with and conformed to.

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v.

ESCO HOSIERY COMPANY, INC.

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

Docket 588—December 27, 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, sold hosiery composed of cotton and silk, branded, labeled and advertised as "Ladies Pure Silk Hose," "Men's Thread Silk Half Hose" and "Men's Silk Half 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 unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Esco Hosiery Company, Incorporated, hereinafter referred to as the respondent, has been and is now using unfair methods of competition in commerce in violation of 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, and the Federal Trade Commission having determined that a complaint should issue against said Esco Hosiery Company, Incorporated, and a full and complete inquiry with respect thereof would be to the interest of the public:

Therefore, the Federal Trade Commission, complaining, shows that it is informed, in such manner that it believes the facts to be substantially as herein set out, and therefore charges as follows:

PARAGRAPH 1. That the said Esco Hosiery Company, Incorporated, is a corporation chartered, organized, existing and doing business under and by virtue of the laws of the State of New York; that its principal office and place of business is in the city of New York, in the State of New York; that it is now, and for more than a year last past continuously has been, engaged in the purchasing and selling of hosiery as a jobber or wholesale dealer.

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PAR. 2. That the said Esco Hosiery Company, Incorporated, is, and has been continuously for the year last past and for a longer period of time, engaged in commerce as defined by the act of Congress approved September 26, 1914, above mentioned, in that it is purchasing both men's and women's hosiery from manufacturers, dealers and others in the State of New York and in other States and Territories of the United States and in the District of Columbia and having the said men's and women's hosiery shipped and transported in commerce to its place of business in the city of New York and that it is likewise engaged in selling the said hosiery and transporting and shipping them in commerce through and among other States and Territories of the United States and in the District of Columbia and into foreign countries, and there is continuously, and has been at all times within the year last past and more, a constant current of trade in commerce in said hosiery among and between the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the city of New York, in the State of New York, and therefrom to and through other States of the United States and Territories thereof and the District of Columbia and into foreign countries.

PAR. 3. That the said Esco Hosiery Company, Incorporated, has [been] and is now engaged in unfair methods of competition in commerce within the meaning of the above mentioned act of Congress, approved September 26, 1914, within the year last past, in that, in the conduct of its business in buying men's and women's hosiery from manufacturers and dealers, and selling, transporting and shipping them, in commerce, [it] has labeled, advertised, stamped and branded, on the packages containing the said hosiery, bought and sold by it, certain labels, advertisements, stamps and brands as follows, to wit:

"ESCO" Warranted	1-4 Dozen LADIES' PURE SILK HOSE Full Fashioned Made in U. S. A.	

"ESCO"	$\frac{1}{2}$ Doz. Ladies' BLACK PURE SILK AND FIBRE HOSE High Spliced Heel, Double Sole Made in U. S. A.	890/1 Size

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"ESCO NO.	MEN'S	Doz. In.
	THREAD SILK HALF HOSE	
	Triple Heel and Toe Made in U. S. A.	

"ESCO Warranted NO.	MEN'S	½ dozen
	SILK HALF HOSE	
	Triple Heel and Toe Made in U. S. A.	

That such labels, advertisements, stamps and brands, on said packages of hose, represent the said hose to be silk, when, in truth and in fact, the material in said hose is not all silk, but only a portion of such materials in such hose is silk, and that such labels, advertisements, stamps and brands are false and misleading and calculated and designed to deceive, and do actually deceive, the trade and the general public into the belief that such hose are manufactured and composed wholly and entirely of silk when in truth and in fact only a portion of said hose is composed of silk and the remaining portion of said hose is composed of material of inferior quality and of less value than silk; that such acts and methods as are above set forth are unfair methods of competition in commerce and give to said respondent an unfair advantage over merchants and other dealers in hosiery, who do not so incorrectly, and in such misleading manner, advertise their hosiery.

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, Esco Hosiery Company, Inc., 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 in-

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roduction 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, Esco Hosiery Company, Inc., is a corporation organized and doing business under the laws of the State of New York with its principal place of business in the city of New York, State of New York.

PAR. 2. That the respondent is 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 respondent in said hosiery among and between the States of the United States.

PAR. 3. That respondent in the conduct of its business as described in paragraph 2 above, sells and ships hosiery made of material derived from the cocoon of the silkworm and cotton in varying proportions labeled, advertised and branded, and in packages or containers labeled, advertised and branded "Ladies' Pure Silk Hose" and "Men's Thread Silk Half Hose" and "Men's Silk Half Hose." That dealers purchasing this hosiery from respondent or from respondent's customers labeled, advertised and branded, or in packages 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 entering into the manufacture of said hosiery.

PAR. 4. That the term "Silk Hose," without any other word or words descriptive of the character, kind or grade of material or 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 silkworm. That the term "Silk Half Hose," without any other word or words descriptive of the character, kind or grade of material or materials, signifies and is understood by a

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substantial part of the purchasing public to mean hosiery made entirely of material derived from the cocoon of the silkworm.

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 many such competitors sell and ship, in said commerce between the States of the United States, hosiery made entirely of material derived from the cocoon of the silkworm, which hosiery and the packages or containers for which are labeled, advertised and branded "Silk Hose." That many such competitors sell and ship, in said commerce between the States of the United States, hosiery made entirely of material derived from the cocoon of the silk worm, which hosiery and the packages or containers for which are labeled, advertised and branded "Silk Half Hose."

PAR. 6. That many of respondent's competitors in the course of commerce between the States of the United States as described in paragraph 5 above, sell and ship hosiery made of material derived from the cocoon of the silkworm and cotton in varying proportions, 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 in the course of commerce between the States as described in paragraph 5 above, sell and ship hosiery made of material derived from the cocoon of the silkworm and cotton in varying proportions, and the labels, advertisements and brands on which and on the packages or containers for which contain the words "Silk 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 his competitors in interstate commerce, who, as set forth in paragraphs 5 and 6 above, sell hosiery made entirely of silk or cotton; 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

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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, Esco Hosiery Company, Inc., and its officers, agents, representatives, servants and employees, cease and desist from directly or indirectly 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.

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.

RACINE TIRE SALES CO.

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