

Complaint.

5 F. T. C.

FEDERAL TRADE COMMISSION

v.

HARRY FREEDMAN, TRADING UNDER THE NAME AND
STYLE OF REX HOSIERY COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 676—January 17, 1923.

• SYLLABUS.

Where an individual 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 entirely of mercerized cotton labeled, advertised and branded "American Silk"; thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

Held, That the sale of said 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 Harry Freedman, trading under the name and style of Rex Hosiery Company, hereinafter referred to as the 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, Harry Freedman, trading under the name and style of Rex Hosiery Company, is engaged at Cleveland, Ohio, in the business of selling hosiery at wholesale and causes hosiery sold by him to be transported to the purchasers thereof from the State of Ohio, through and into other States of the United States, and in carrying on such business is in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent in the course of his business, as described in paragraph 1 hereof, places or causes to be placed upon hosiery sold by him, and upon the boxes containing same, false and deceptive labels, in that such labels are calculated to and do create in the minds of the purchasing public the mistaken belief that such

hosiery is made of materials of better and more expensive grades or qualities than those of which such hosiery is in fact made; that among such false and deceptive labels, so used by respondent, are labels containing the words "American Silk," which labels are placed upon hosiery which contains no genuine silk and upon the boxes containing such hosiery.

PAR. 3. 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, Harry Freedman, trading under the name and style of Rex Hosiery Company, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

The respondent having entered his appearance in his own proper person and filed his 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 OF FACT.

PARAGRAPH 1. That the respondent, Harry Freedman, is engaged in the business of selling hosiery at wholesale at Cleveland, Ohio, under the firm name and style of Rex Hosiery Company.

PAR. 2. That the respondent is engaged in the business of selling, in the State of Ohio and in other States of the United States, hosiery, and is causing same to be shipped and transported from the State of Ohio 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

Findings.

5 F. T. C.

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 prior to April 1, 1920, the respondent in the conduct of his business, as described in paragraph 2 above, sold hosiery made entirely of mercerized cotton, labeled, advertised and branded, and distributed in packages or containers labeled, advertised, and branded "American Silk." That dealers purchasing this hosiery from respondent or respondent's customers, labeled, advertised, and branded, and in packages or containers labeled, advertised, and branded as aforesaid, offer and sell it so labeled to the general purchasing public. That neither the said hosiery, nor the boxes nor 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 term "American Silk," 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 contains materials 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 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 silk, which hosiery and the packages or containers of which are labeled, advertised, and branded "Silk."

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 entirely of mercerized cotton, which hosiery and the packages or containers in which it is packed which are not labeled, advertised, or branded with any word or words descriptive of the material entering into the manufacture of said hosiery. That a number of respondent's competitors, in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery made entirely of mercerized cotton, which hosiery and the packages or containers in which it is packed are labeled, advertised, and branded with a word or words descriptive of the material of which the hosiery is made, such as "Cotton" or "Mercerized Cotton."

PAR. 7. The labels or brands under which the respondent sells hosiery, as set forth in the foregoing findings, tend to and do mislead and deceive a substantial part of the purchasing public as to

372

Order.

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 mercerized cotton, 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.

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, Harry Freedman, trading under the name and style of Rex Hosiery Company, his officers, agents, representatives, servants and employees, cease and desist from directly or indirectly:

I. Using as labels or brands on hosiery sold by him, 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.

376

FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

5 F. T. C.