

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

Docket 682—May 12, 1923.

SYLLABUS.

Where a firm engaged in the sale of hosiery at wholesale in competition with concerns which 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 fibre, but containing no silk, branded or labeled "Ladies' Silk Boot Hose" or "Ladies' Art Silk Hose," respectively; thereby misleading a substantial part of the purchasing public into believing that all except the top, heel, toe, and possibly the sole, of the former, and all of the latter, were composed of silk:

Held, That the sale of goods branded or labeled 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 1 hereof, sell hosiery made of cotton and 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, MODIFIED 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 person 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, Joseph Kahn, Jacob Frank, and Jerome Frank, constitute a partnership and carry on business

Findings.

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at New York, N. Y., 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 fibre, 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 fibre, and containing no true silk, labeled and branded and 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 signifies to the unskilled buying public hosiery of which the top, heel, and toe, and possibly the sole, are composed of material different from that of which the other portion of the hosiery is made and that the said hosiery is, except as to top, heel, toe, and possibly

the sole, composed of silk produced from the cocoon of the silkworm. That the term "Art Silk Hose" when applied to hosiery signifies to the unskilled buying public hosiery which is entirely composed of silk produced from the cocoon of the silkworm.

PAR. 6. That many of respondents' competitors in the sale of hosiery in interstate commerce sell and ship in interstate commerce, hosiery, the top, toe, and heel of which is made of cotton and the other part is made of silk produced from the cocoon of the silkworm, which hosiery and the packages or containers in which the same is marketed are labeled or branded and advertised as "Silk Boot Hose." That many of such competitors sell and ship in interstate commerce hosiery made entirely of silk produced from the cocoon of the silkworm, which hosiery and the packages or containers in which it is marketed are labeled or branded and advertised as "Silk Hose."

PAR. 7. 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 fibre, 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 fibre, 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 "Fibre 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 meth-

Order.

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ods 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."

MODIFIED 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 modified statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its modified 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 labelling or branding hosiery sold by them or the containers in which the same are marketed, with the words "Art Silk" and from labelling or branding hosiery sold by them or the containers in which the same are marketed with the words "Silk Boot" unless such hosiery so labelled or branded or in the containers so labelled or branded is composed except as to the top, toe, heel, and sole thereof, of silk produced from the cocoon of the silk worm.

ROYAL DUKE OIL CO.

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Complaint.

FEDERAL TRADE COMMISSION

v.

ROYAL DUKE OIL CO.