

Complaint.

G. F. T. C.

FEDERAL TRADE COMMISSION

v.

LEXINGTON MANUFACTURING COMPANY, MIDDLES-
BURG MILLS, AND MILLWOOD CORPORATION.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 875—July 14, 1923.

SYLLABUS.

Where a corporation had for many years applied to high quality bed tickings of uniform weight, quality and pattern made by it, labels containing the letters "A. C. A.," attached to the bottom edge of each bolt, and said tickings as so labeled had come to be well and favorably known to the trade and to the public generally and had become identified in the minds of the trade and a substantial portion of the public as the product of said corporation; and thereafter competitors applied to bolts of their ticking resembling its aforesaid product in pattern and general appearance (but of lighter weight in some cases) labels containing the letters "A. C. A."; with the result that their tickings were sold as and for those of said corporation, and their customer dealers were enabled to sell the same more readily and to obtain higher prices therefor than they otherwise would have been able to do:

Held, That such simulation of a competitor's label, 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 the Lexington Manufacturing Company, Middlesburg Mills, and Millwood Corporation, hereinafter referred to as respondents, have been and now are using unfair methods of competition, in interstate commerce in violation of the provisions 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," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. Respondent Lexington Manufacturing Company is a corporation organized under the laws of the State of South Carolina. It has its office and principal place of business at the town of Lexington in said State, where it is engaged in the manufacture of cotton bed-ticking and other cotton products. The Middlesburg Mills is a

corporation organized under the laws of the State of South Carolina with its office and principal place of business at the town of Batesburg in said State, where it likewise manufactures cotton bedticking and other cotton products. Each said respondent for a number of years last past has been and is now engaged in the business of selling bedticking manufactured by it to purchasers resident at various points in various States of the United States and delivers the bedticking so sold by causing the same to be transported from its aforesaid place of business into and through various States of the United States to said purchasers at their several points of residence. In such manufacture and sale of bedtickings each said respondent continuously has been and is now in competition with other persons, firms, and corporations similarly engaged. Respondent, Millwood Corporation, is a corporation organized under the laws of the State of New Jersey with its principal office in the City and State of New York. It is what is commonly known as a holding corporation and owns a controlling amount of the capital stock of respondent Lexington Manufacturing Company and of respondent Middlesburg Mills. The officers of the three respondents are identical, and through them the Millwood Corporation controls and manages the business of respondents Lexington Manufacturing Company and Middlesburg Mills. Respondent Millwood Corporation likewise owns a controlling amount of the capital stock of and similarly controls the business of eight other corporations engaged in the manufacture and sale in interstate commerce of bedticking and other cotton products.

PAR. 2. Among the aforesaid competitors of respondents Lexington Manufacturing Company and Middlesburg Mills is the Amoskeag Manufacturing Company, which has its office and principal place of business at the city of Manchester in the State of New Hampshire. It is and has been for many years engaged in the manufacture and sale of various qualities and grades of bedtickings, among which is a bedticking made by a special process and in a special pattern and design originated by said company. The bedticking so made by such special process always has been and is now the best grade of ticking made by said Company and was named and designated by it "A. C. A." ticking. The symbol "A. C. A." was chosen by said company as an abbreviation of the words "Amoskeag Company's A. quality." Said ticking has for many years borne and now bears said name and designation. Because of the quality and adaptability to purpose of said "A. C. A." ticking, the same became, after its introduction by said company, and still is, popular and in great de-

Complaint.

6 F. T. C.

mand in the trade and amongst the general public and was and is known and identified in the minds of the trade and general public as "A. C. A." ticking. A number of years ago, in order to mark and identify to the purchaser the various grades of tickings made by it, the Amoskeag Manufacturing Company adopted a system of labeling which consists of applying several separate labels to each bolt of bedticking manufactured by it, one of which labels, known as a foot label, is attached near the bottom edge of the bolt in each instance and bears no words or symbols other than a letter or letters adopted by said company to indicate the grade of ticking to which said label is attached. In conformity with this system of labeling and as a part thereof, said company attaches to each bolt of its said "A. C. A." ticking, among other labels, a foot label bearing said symbol "A. C. A." and no other letters, words, or symbols. As a result of said system of labeling, said company's said "A. C. A." ticking is now identified in the minds of the trade and the purchasing public with said foot label bearing said symbol "A. C. A."

PAR. 3. A number of years ago respondent Lexington Manufacturing Company and respondent Middlesburg Mills each began designating, and has continuously since designated, certain bed-tickings made by it as "A. C. A." ticking, and adopted the practice of placing upon each bolt of said tickings a system of several labels among which there is a foot label upon which appears the symbol "A. C. A." and no other letters, words, or symbols. The said tickings thus labeled by each said respondent closely simulate the weave and design of the aforesaid "A. C. A." ticking of the Amoskeag Manufacturing Company and are in some instances inferior thereto. Said respondents do not attach said foot label to a specific grade of bedticking, but attach the same to various grades whenever they see fit, or are requested by their dealer-customers so to do.

PAR. 4. The aforesaid practice by respondents Lexington Manufacturing Company and Middlesburg Mills has had in the past and now has the capacity and tendency of misleading and deceiving the trade and the general public into the belief that tickings manufactured by said respondents and by them labeled with a foot label bearing the letters "A. C. A." are identical with said "A. C. A." ticking manufactured by the Amoskeag Manufacturing Company, and of inducing the trade and general public to purchase tickings manufactured by said respondents as and for the "A. C. A." ticking manufactured by the Amoskeag Manufacturing Company.

PAR. 5. Respondent Millwood Corporation in its aforesaid control and management of the business of respondent Lexington Manu-

facturing Company and respondent Middlesburg Mills, dictates, and acquiesces, and participates in, said practice.

PAR. 6. That the above alleged acts and things done by respondents and by each of them constitute 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 Lexington Manufacturing Company, Middlesburg Mills, and Millwood Corporation, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed their answer herein, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint before Lee Cyr, an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission having submitted a brief, and counsel for the defendants having notified the Commission of his intention not to file any brief, 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. Respondent Lexington Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business at the town of Lexington in said State, where for several years prior to November 16, 1922, it was engaged in the manufacture of bedticking and other cotton products.

PARAGRAPH 2. Respondent Middlesburg Mills is a corporation organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business at the town of Batesburg in said State, where for several years prior to November 16, 1922, it was likewise engaged in the manufacture of bedticking and other cotton products.

Findings.

6 F. T. C.

PAR. 3. Respondent Millwood Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with a statutory office in the city of Wilmington in said State, and executive offices in New York City, N. Y. It has never engaged in manufacturing or selling, and it functions solely as a holding company, i. e., it owns the capital stock of other companies, including more than 50 per cent of the capital stock of the other respondents herein.

PAR. 4. The officers of respondents Lexington Manufacturing Company and Middlesburg Mills are identical, and the same individual is president of all three respondents.

PAR. 5. For several years prior to November 16, 1922, Lexington Manufacturing Company and Middlesburg Mills were engaged in the business of selling said products to jobbers and manufacturers in the various States of the United States, and caused same to be transported from their respective mills, into and through various States of the United States to said purchasers; and in the course and conduct of their said business have been at all times herein mentioned in competition with other persons, partnerships, and corporations, engaged in the manufacture and sale of bedticking and other cotton products. On November 16, 1922, the respondents Lexington Manufacturing Company and Middlesburg Mills sold and disposed of their entire physical assets and good will, as of April 1, 1922, their only property now consisting of the capital stock of the companies which acquired said property. Both respondents Lexington Manufacturing Company and Middlesburg Mills are not now, and have not been, since November 16, 1922, engaged in manufacturing and selling, but they have not been dissolved and still exist as corporate entities. The corporation to which both respondents transferred their business has continued said business of the manufacture of bedticking.

PAR. 6. Among the competitors of respondents Lexington Manufacturing Company and Middlesburg Mills was the Amoskeag Manufacturing Company, which has been engaged in manufacturing cotton products in the vicinity of Manchester, N. H., since the early years of the nineteenth century. Although the form of organization has changed from a partnership to a corporation, and finally to a voluntary association, the name "Amoskeag Manufacturing Company" has been used exclusively from the beginning. It began to manufacture bedticking in 1826, and until power looms were installed in the company's mills in 1836, the cloth was woven in the home, on hand looms, from yarn spun in the company's mills. Since 1840 at least, and probably several years earlier, the highest quality bed-

ticking of a blue and white stripe pattern, 32 inches in width, weighing 8 ounces to the yard, manufactured and sold by the Amoskeag Manufacturing Company, has been designated and labeled by it "A. C. A."—the letters being an abbreviation of the words "Amoskeag Company's A" quality. This label is also used on identical ticking, 36 inches in width, but on no other product of the Amoskeag Manufacturing Company. This 36-inch width ticking is proportionately heavier than the 32-inch ticking weighing 9 ounces to the yard.

PAR. 7. The original label as used by the Amoskeag Manufacturing Company was as follows:

Amoskeag Manufacturing Company
Power-Loom
Yds. ———
A C A
Amoskeag Falls, N. H.

This label was superseded sometime prior to 1860 by the following:

Amoskeag Manufacturing Company
A D 1836
Power-Loom
Yds. ———
A C A
Manchester, N. H.

Both labels, described above, were printed in red on a white background, with a scroll border, but between the years 1880 and 1885 the label then in use was reprinted in more attractive colors, i. e., a gray and gilt border was added, and the scroll was reproduced in gray and gilt. At the time this change was made another label was adopted on which appears a picture of the company's mills, with the words "AMOSKEAG MFG. CO'S MILLS, MANCHESTER, N. H." The "medallion" label on which is reproduced the medals awarded the Amoskeag Manufacturing Company at the London Exposition in 1851 and the Paris Exposition in 1855, was adopted between the years 1855 and 1860, and reprinted in more attractive colors between the years 1880 and 1885. Between the years 1905 and 1907 a fourth label was adopted, which bears the letters "A. C. A." printed in red type, 1½ inches high, on a white background, surrounded by a rectangular border in gray, gilt, and red. This latter label, which is known as the foot label, is attached to the bottom edge of each bolt of "A. C. A." ticking manufactured by the Amoskeag Manufacturing Company.

Findings.

6 F. T. C.

PAR. 8. The weight, quality, and pattern of "A. C. A." ticking, manufactured by the Amoskeag Manufacturing Company has been consistently maintained for more than 80 years. The only change occurred about the year 1876, when a selvage or narrow border was added to facilitate sewing the ticking together. Formerly most of the bedding was made in the home, but in recent years bedding has been made in increasing quantities in factories, and hair and other materials have to a considerable extent replaced feathers for that purpose, although feathers continue to be used almost entirely in making pillows. The feather-proof and hair-proof quality of "A. C. A." ticking and its adaptation to the purposes for which it is used has caused it to become well and favorably known to the trade and the public generally, and it has become identified in the minds of the trade and a substantial portion of the public as the product of the Amoskeag Manufacturing Company.

PAR. 9. Several years ago respondents Lexington Manufacturing Company and Middlesburg Mills each began to label ticking, similar in pattern and general appearance, to the "A. C. A." ticking manufactured by the Amoskeag Manufacturing Company, with the letters "A. C. A." This label, together with two other labels were used by the Lexington Manufacturing Company on one grade of ticking only, weighing 8 ounces to the yard. The head or top label attached to the top edge of the bolt is as follows:

BOWLING BROOK

Batt. ———

——— yds.

IMPROVED FINISH.

The center label, considerably smaller in size, is as follows:

8 OZ.

**WARRANTED FEATHER PROOF
STANDARD**

The head ticket contained a picture of a flowing brook and a rising sun and contained no reference whatever to the identity of the manufacturer or the place of manufacture.

The foot label, previously referred to, on which the letters "A. C. A." appear, in black type, 1 inch high, on a pale green background, surrounded by a rectangular border in red, yellow, and black, is attached to the bolt in the same relative position as the foot label used by the Amoskeag Manufacturing Company. The three labels described have also been used on a small quantity of ticking weighing 8 ounces to the yard, by Middlesburg Mills. An "A. C. A." label, similar to that described, has been used by Middlesburg Mills in con-

274

Order.

junction with labels bearing the words "Iron Mountain" and "Ridge Spring" upon ticking similar in pattern and design to the ticking of the Amoskeag Manufacturing Company, weighing 4 ounces to the yard and 7 ounces to the yard, respectively; also in conjunction with other labels on ticking weighing less than 8 ounces to the yard. Each respondent has attached a label bearing the letters "A. C. A." to ticking, at the request of its sales agent and purchasers. Also on its own initiative without being requested to do so.

PAR. 10. The sale of ticking, of a blue and white stripe pattern, weighing 8 ounces to the yard, by the Amoskeag Manufacturing Company for generations, has resulted in the trade and a substantial portion of the consuming public, associating the letters "A. C. A." with the ticking of that pattern and weight manufactured by that company. The use of this label by respondents and other manufacturers has actually resulted in their product being sold as and for the ticking of the Amoskeag Manufacturing Company. The use of the label "A. C. A." by respondents Lexington Manufacturing Company and Middlesburg Mills has not only enabled dealers to obtain higher prices for the ticking so labeled and effect a more ready sale thereof, but it has also had the tendency and capacity to mislead and deceive the purchasers thereof and the consuming public, by enabling dealers to sell the tickings of respondents as and for the ticking manufactured by the Amoskeag Manufacturing Company.

CONCLUSION.

That the acts, practices, and activities of respondents as hereinabove set forth and under the conditions and in the circumstances set forth in the foregoing findings as to the facts are unfair methods of competition in commerce and constitute a violation of Section 5 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 respondents, the testimony and documentary evidence offered and received, and the brief of counsel for the Commission, and the Commission having made its findings and 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,"

Order.

6 F. T. C.

Therefore, it is now ordered, That the respondents Lexington Manufacturing Company and Middlesburg Mills corporations organized and existing under and by virtue of the laws of the State of South Carolina, their officers, directors, agents, servants and employees, do cease and desist—

1. From in any way designating or describing any bedticking manufactured or sold by them as "A. C. A." ticking, either in advertisements, circulars, price lists, or other literature in which bedticking manufactured or sold by respondents is listed, described, or advertised for sale in interstate commerce.

2. From placing upon any ticking manufactured or sold by them any ticket or label upon which appear the letters "A. C. A." or any combination or variation thereof.

It is further ordered, That respondents, within sixty (60) days after the service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth, to which report should be attached copies of all cartons, containers, catalogues, price lists, circulars, and labels prepared and distributed by said respondents to the trade in interstate commerce.

It is further ordered, That the complaint heretofore issued in the above entitled matter be, and the same is, hereby dismissed as to the respondent Millwood Corporation.

THE DON-O-LAC CO., INC.

283

Complaint.

FEDERAL TRADE COMMISSION

v.

THE DON-O-LAC COMPANY, INC.