FEDERAL TRADE COMMISSION

v.

BROWN-PHELPS HOSIERY COMPANY.

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

Docket 1063—October 30, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale to wholesale and retail dealers of hosiery, in competition with concerns which correctly branded, labeled, and advertised their products in respect of composition, sold hosiery composed of silk and vegetable fibre, branded, labeled and advertised as "Special Thread Silk Hosiery," "Silk," "Special Silk," "Ladies' Plated Silk Hose": with the capacity and tendency thereby to mislead and deceive the trade and the purchasing public with reference to the composition of said goods and to induce the purchase thereof:

Held, That the sale of goods branded, labeled and advertised as above set forth constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that the Brown-Phelps Hosiery Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in the City of Philadelphia in said State. It is engaged in the manufacture of hosiery and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said hosiery when so sold to be transported from its said principal place of business at Philadelphia, Pennsylvania, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of hosiery in interstate commerce and with the trade generally.

PAR. 2. For about a year last past respondent has packed certain hosiery manufactured and sold by it to aforesaid dealers and consisting partly of silk derived from the cocoon of the silk worm and partly of vegetable fibre and material other than such silk, in containers bearing labels upon which appear the words "Special Thread Silk Hosiery" or other phrases representing said hosiery to be composed of such silk without disclosing the fact that said hosiery is in part composed of vegetable fibre or other material not derived from the cocoon of the silk worm. Respondent further advertises said hosiery to the trade in various trade publications and magazines, and in correspondence and dealings with its dealer customers respondent uses price lists, catalogues and other trade literature in which respondent causes said hosiery to be listed and designated as "Silk," "Special Silk," "Ladies Plated Silk Hose," and by other similar designations representing said hosiery to be made of such silk and without disclosing the fact that said hosiery is composed in part of vegetable fibre and other material not derived from the cocoon of the silk worm.

PAR. 3. The term "silk" is used and understood by the trade and purchasing public to mean a commodity derived wholly from the cocoon of the silk worm, wherefore, respondent's use of the aforesaid phrases containing the word "silk" in the manner and under the circumstances set out in paragraph 2 hereof, has the capacity and tendency to mislead and deceive the trade and the purchasing public into the erroneous belief that respondent's said hosiery is composed wholly of material derived from the cocoon of the silk worm and containing no vegetable fibre or other material not so derived, and to cause the trade and public to purchase said hosiery in that belief.

PAR. 4. The above alleged acts and things done by respodnent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods 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, Brown-Phelps Hosiery Company, charging it with unfair methods of competition in commerce, in violation of the provisions of said act. Said respondent having entered his appearance and having filed his answer to said com-

plaint, and having entered into a stipulation in writing as to the facts, thereupon this proceeding came on for final hearing, and the Commission being fully advised in the premises, and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Brown-Phelps Hosiery Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the city of Philadelphia, in said State. It is engaged in the manufacture of hosiery and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said hosiery when so sold to be transported from its said principal place of business at Philadelphia, Pennsylvania, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations similarly engaged in the manufacture and/or sale of hosiery in interstate commerce and with the trade generally.

PAR. 2. For about a year last past respondent has packed certain hosiery manufactured and sold by it to aforesaid dealers and consisting partly of silk derived from the cocoon of the silk worm and partly of vegetable fibre and material other than such silk, in containers bearing labels upon which appear the words "Special Thread Silk Hosiery" or other phrases representing said hosiery to be composed of such silk without disclosing the fact that said hosiery is in part composed of vegetable fibre or other material not derived from the cocoon of the silk worm. Respondent further advertises said hosiery to the trade in various trade publications and magazines, and in correspondence and dealings with its dealer customers, respondent uses price lists, catalogues and other trade literature in which respondent causes said hosiery to be listed and designated as "Silk," "Special Silk," "Ladies Plated Silk Hose," and by other similar designations representing said hosiery to be made of such silk and without disclosing the fact that said hosiery is composed in part of vegetable fibre and other material not derived from the cocoon of the silk worm.

PAR. 3. The term "silk" is used and understood by the trade and purchasing public to mean a commodity derived wholly from the cocoon of the silk worm, wherefore, respondent's use of the aforesaid phrases containing the word "silk" in the manner and under the circumstances set out in paragraph 2 hereof, has the capacity and

tendency to mislead and deceive the trade and the purchasing public into the erroneous belief that respondent's said hosiery is composed wholly of material derived from the cocoon of the silk worm and containing no vegetable fibre or other material not so derived, and to cause the trade and public to purchase said hosiery in that belief.

PAR. 4. Competitors of respondent are engaged in selling and shipping hosiery made of vegetable fibre and of silk similar to the hosiery sold by respondent, which hosiery so shipped and sold by said competitors is labeled, advertised and branded accurately and truthfully.

CONCLUSION.

That the practices set forth in the foregoing findings as to the facts constitute, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of 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."

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 stipulation as to the facts, 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,"

Now therefore, it is ordered, That the respondent, Brown-Phelps Hosiery Company, its officers, agents, representatives, servants, and employees, cease and desist from, directly or indirectly:

(1) 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 (a) unless the hosiery on which it is used is made entirely of silk of the silk worm, or (b) unless where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other 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 the respondent has complied with the order herein.

FEDERAL TRADE COMMISSION

v.

HERMAN M. NEUSCHATZ AND I. M. HALPERN, CO-PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF PERUVIAN RUBBER CEMENT COMPANY.