

Complaint.

FEDERAL TRADE COMMISSION

v.

HYGIENIC LABORATORIES.

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

Docket 959—November 14, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a preparation, called "Kolor-Bak," which it alleged would restore the original color to grey hair, and in its advertisements offered free for a trial demonstration; gave to prospective customers sending it the coupons from its advertisement calling for its "Special Free Trial Offer" only the privilege of purchasing a definite quantity of such preparation, upon the condition that if it should fail to satisfy the customers, then the purchase price would be returned:

Held, That such deceptive solicitation of patronage, under the circumstances set forth, constituted an unfair method of competition.

Mr. W. T. Roberts for the Commission.

Mr. Harris F. Williams of Chicago, Ill., for respondent.

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 Hygienic Laboratories, 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:

PARAGRAPHS 1. The respondent, Hygienic Laboratories, is a corporation incorporated under the laws of the State of Illinois; its officers are as follows: Albert Leib, president, Edward A. Hochbaum, secretary, treasurer and general manager; the office of the corporation is located at 402 South Peoria Avenue in the city of Chicago, and its factory is located at 3334 West 38th Street in said city. The respondent is engaged in manufacturing, selling and distributing a hair color restorer known as "KOLOR-BAK." Respondent, through its officers, causes the product hereinbefore referred to, to be sold and transported from the city of Chicago, State of Illinois, to purchasers through and into various other States of

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the United States. In the course of business above referred to the respondent has been and now is in competition with other individuals, partnerships and corporations engaged in the manufacture and sale in interstate commerce of other products sold and used for the purpose of restoring natural color to the hair.

PAR. 2. Respondent sells and distributes the said product known as "KOLOR-BAK" through the various States of the United States by mail orders and employs no traveling salesmen and very few retail drug stores handle this product and to facilitate the sale of said product respondent does a large amount of advertising in newspapers and other periodicals wherein it sets forth the supposed merits of this product offering a trial of the same free of charge.

PAR. 3. The advertisements so published by said respondent contain language substantially as follows: "We invite every reader who has gray hair, who suffers from itching scalp, dandruff or falling hair, to prove 'KOLOR-BAK' without risking a penny. Don't put this off a day; send the coupon which not only entitles you to receive the free trial privilege, but brings our valuable book on treatment of the hair free." The coupon states: "Please send me your free trial offer on 'KOLOR-BAK' and your free book on treatment of the hair and scalp." When this coupon is received by the respondent a circular letter and booklet is sent to the party mailing this coupon, which letter states: "I am very glad indeed to comply with your request for our booklet, which you will find enclosed. Our free trial offer of results or money refunded will be found explained in the booklet. The free trial offer, as the attached booklet will show, consists of a guarantee that five bottles of 'KOLOR-BAK' will restore the natural color or the \$7.50 paid therefor in advance will be returned."

There is no offer on the part of respondent to give to the person sending in these coupons any free trial of the preparation known as "KOLOR-BAK" except as set out in said booklet, which proposition amounts to saying that if the preparation is applied or used according to directions and does not restore the color of hair, the \$7.50 paid therefor in advance will be returned.

The aforesaid advertisements are misleading for the reason that respondent claims that a large number of people does not use the "KOLOR-BAK" according to instructions and are therefore not entitled to have the money paid by them refunded. Respondent claims that, in accordance with the proposals made in such advertisements, it refunds the money paid by its customers to the extent of one or two percent of the total number purchasing this product, although a much larger number of such purchasers make application

to have their money refunded. Respondent refuses to refund the same, alleging that the preparation has not been used according to instructions and that such purchasers are therefore not entitled to have their money refunded.

PAR. 4. The above alleged acts and things done by respondent 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 its complaint upon the respondent, Hygienic Laboratories, charging it with the use of unfair methods of competition in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, a stipulation as to the facts was agreed upon by counsel for the Commission and counsel for respondent, wherein it was agreed that the statement of facts therein contained may be taken as the facts of this proceeding, in lieu of testimony, in support of the charges stated in the complaint or in opposition thereto. And thereupon this proceeding came on for final hearing, 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. The respondent, Hygienic Laboratories, is a corporation organized under the laws of the State of Illinois with principal office and place of business at Chicago in said State, and at the time of the issuance of the complaint herein, prior thereto and since said date, has been engaged in the business of manufacturing and selling toilet preparations including a preparation which it has designated as "Kolor-Bak," for which the claim is made by respondent, that such preparation will restore the original color to gray hair, and the respondent has caused quantities of such preparation so sold by it, to be transported from the State of Illinois, through and into other States of the United States, for deliveries to purchasers thereof, and at all times during the course of such business respondent has been in competition with other persons, partnerships, and corporations similarly engaged.

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PAR. 2. That respondent now markets about one-half of its output through retail drug stores and the drug sundries departments of department stores, and the balance of its production is marketed direct to the consuming public upon mail orders. That prior to the issuance of the complaint herein, respondent marketed the greater portion of its product direct to the consuming public; that the sales plan of respondent was then substantially as follows: Respondent caused advertisements to be inserted in newspapers and other publications of nation-wide circulation, which advertisements contained a coupon which could be filled out with the name and address of anyone who desired to avail himself of the offer contained in said advertisement, and returned to the respondent. That the offer contained in such advertisements was described as "A Special Free Trial Offer," concerning the preparation designated by respondent as "Kolor-Bak," followed by the statement that by filling out and returning the coupon, anyone would be entitled to receive such free trial privilege. Upon receipt of the coupons respondents would then send to the persons named therein a letter and enclose therewith a booklet wherein the terms of the so-called "Special Free Trial Offer" were set out, which required the customer to send to respondent \$7.50 in payment of six bottles of "Kolor-Bak," upon the condition that if the preparation failed to fully satisfy the customer after using the six bottles as directed, then the \$7.50 would be returned promptly, without argument, the customer to be sole judge as to whether he was satisfied.

PAR. 3. That prior to the issuance of the complaint herein respondent received annually, approximately 100,000 of the coupons described in paragraph 2 hereof and of the persons named in such coupons, approximately 20,000 accepted the terms of the offer contained in the booklet sent them by respondent as set out in paragraph 2 hereof.

PAR. 4. That when a customer had used a quantity of "Kolor-Bak" purchased pursuant to the terms of the offer described in paragraph 2 hereof, and applied to respondent for a refund of the purchase price upon the ground that he was not satisfied with the results produced, respondent would send him a questionnaire to be filled out and returned to respondent for the expressed purpose of ascertaining whether the customer had used the preparation in accordance with the directions and in cases wherein respondent claimed that the questionnaire as filled out, showed that the customers had not used the preparation according to directions, respondent would then claim exemption from liability upon the refund feature of the offer and would offer a special "Kolor-Bak" in lieu

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of a refund. That in the course of correspondence incident to ascertaining whether customers applying for a refund had used the preparation according to directions, a number of such customers failed to pursue further their claim for a refund and were not heard from again and no refund was given them. However, a cash refund was given in every case where claim was further pursued, under any circumstances.

PAR. 5. That about the time of the issuance of the complaint herein or shortly prior thereto respondent put in operation a plan under which customers who applied for a refund of the purchase price of "Kolor-Bak" used by them were given the option, in certain cases, of accepting, in lieu of the cash refund, six bottles of "Kolor-Bak" which respondent claimed was of special strength and suitable for stubborn cases which would not yield to treatment by "Kolor-Bak" suitable to the usual run of cases. That in the past year, of those who applied to respondent for a refund of the purchase price of "Kolor-Bak" used by them about three-fifths of the whole number accepted the six bottles of "Kolor-Bak" which respondent represented to be of special strength, and the remaining two-fifths, except those who abandoned their claim for a refund, insisted upon and received the cash refund which aggregated in the year about \$4,200.

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 complaint of the Commission, the answer thereto and a stipulation as to the facts filed herein, and the Commission having made its report in which it stated its findings as to the facts and its conclusion that the respondent, Hygienic Laboratories, 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,"

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It is now ordered, That the respondent, Hygienic Laboratories, its officers, agents, representatives, servants and employees, do cease and desist from:

Stating, in advertisements which it may cause to be published, or in advertising matter which it may cause to be distributed to the public, that it will give to anyone desiring it or applying for it, a "Special Free Trial Offer," or a "Free Trial Offer" of a preparation manufactured and sold by respondent and for which the claim is made by respondent, that such preparation will restore the original color to gray hair, and then requiring those who apply for the so-called "Free Trial" privilege, to purchase a quantity of such preparation upon the condition that if the preparation should fail to satisfy the customer, then the purchase price will be returned, thereby affording customers only what is known commercially, as a conditional "money back offer" and not a free trial offer.

It is further ordered, That the respondent, Hygienic Laboratories, shall within thirty (30) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

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FEDERAL TRADE COMMISSION
v.
BROADWAY KNITTING COMPANY.

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

Docket 986—November 14, 1923.

SYLLABUS.

Where a corporation engaged in the sale of knitted underwear, sweaters, blankets, overcoats and other similar merchandise direct to consumers through traveling agents or solicitors, and neither owning, operating, nor controlling any knitting machinery, knitting mill, or factory; used its corporate name "Broadway Knitting Co.", and prominently displayed the same in its advertisements, order blanks, package labels and other stationery, and so labeled the garments sold by it; thereby misleading the trade and public into believing it to be the manufacturer of the products sold by it:

Held, That such misleading use of corporate name, under the circumstances set forth, constituted an unfair method of competition.

Mr. G. Ed. Rowland for the Commission.

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 Broadway Knitting Company, a corporation, 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 now and has been for over five years last past a corporation duly organized and existing under and by virtue of the laws of the State of Utah with its principal place of business at Salt Lake City, in said State, and during said period of time has been and now is engaged in the business of selling direct to customers located chiefly in the States of the United States other than Utah, knit and woven underwear, sweaters, coats, shirts, blankets and similar merchandise, and in shipping or causing to be shipped said merchandise, when sold, from the State of Utah to its said customers at various points in States of the United States other than Utah. In the course and conduct of its said business, respondent is and has been during all the times mentioned in this complaint, in competition with others similarly engaged.

Findings.

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PAR. 2. Respondent, in the course and conduct of its said business, uses its corporate name "Broadway Knitting Company", which name it has and does now prominently display in its newspaper advertisements, order blanks, package labels, and other stationery and literature. It also has used and does now use order blanks to be signed by prospective customers on which are printed the words "Woolen goods made to order." Respondent solicits its business through its agents who travel throughout the various States of the United States other than Utah and solicit and obtain orders direct from users and consumers for the articles sold by respondent; and said agents, in addition to circulating respondent's literature as above set forth, orally represent to prospective customers that the respondent is the manufacturer of the goods offered for sale.

PAR. 3. Respondent has at no time during its existence, owned, controlled, or operated, and does not now own, control, or operate, any knitting factory or other place where knit or woven goods are made or manufactured and did not and does not now manufacture any of the articles sold or offered for sale by it, but now fills the orders received by it from its customers, from merchandise purchased by it from the stocks of manufacturers and others.

PAR. 4. The use by respondent of the corporate name "Broadway Knitting Company" in the manner above alleged and the course of conduct set forth in paragraphs 2 and 3 of this complaint, severally, or taken together, have the tendency and capacity to mislead and deceive, and do mislead and deceive, the purchasing public into the mistaken belief that the respondent owns or operates a factory in which is manufactured the articles sold or offered for sale by it and that persons buying from respondent are buying direct from the manufacturer, thereby saving the profits of the middleman.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said 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 provision of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent Broadway Knitting Company charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

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

And therefore this proceeding came on for final hearing and counsel for the Commission having submitted a brief and the defendant 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 is now and has been since August, 1918, a corporation duly organized and existing under the laws of the State of Utah, with its principal place of business in Salt Lake City in said State, and during said period of time has been and now is engaged in the business of selling direct to consumers located chiefly in the States of the United States other than Utah, knit underwear, sweaters, blankets, overcoats and similar merchandise, and in shipping or causing to be shipped said merchandise from the State of Utah to its customers at various points in States of the United States other than Utah. In the course and conduct of its said business respondent is and has been during all the time mentioned in competition with others similarly engaged.

PAR. 2. Respondent in the course and conduct of its business uses its corporate name "Broadway Knitting Company," which name it has and does now prominently display in its advertisements, order blanks, package labels and other stationery. It also has used and now uses order blanks to be signed by the prospective customers on which are printed the words "Woolen goods made to order." Respondent solicits its business through traveling agents or solicitors who travel throughout various States of the United States, and solicit and obtain orders direct from users and customers for the articles sold by respondent, and in soliciting said business and in taking orders for articles sold, said agents use the stationery and order blanks of the respondent. In some instances respondent has represented to customers that it manufactures the articles which it sells, and its salesmen are instructed not to make any statement regarding where or by whom the articles which it sells are made unless specifically asked by the customer; if no question is asked, the articles are sold as being respondent's goods. Respondent does not know

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whether its salesmen represent to the customers that the articles are made by the respondent.

PAR. 3. It is only occasionally that respondent has to have made to order any of the goods which it sells. Of the knitted goods sold by respondent, not over 10% of these articles are made to individual measure, and of the other goods sold by respondent, it is only an exceptional case where it is necessary to have the article made to order from measurements by customers. Respondent buys large quantities of the various articles which it sells at the beginning of the season in stock sizes and fills its orders from this stock. Respondent purchases the knitted underwear, sweaters and hosiery which it sells from knit goods manufacturers in the State of Utah, and some eastern manufacturers, and its leather vests from manufacturers located in St. Paul, Minn. In cases where it is necessary, the measurements of the customer are taken and the mills above mentioned manufacture the articles to conform to such measurements. Respondent puts a label on practically all of the sweaters, leather vests and overcoats which it sells, and on some of the underwear bearing the words "Broadway Knitting Company."

PAR. 4. The respondent has at no time during its existence owned, operated or controlled, and does not now own, operate or control any knitting machinery, knitting mill or factory, and does not now manufacture, and has never during its existence, manufactured any of the articles sold or offered for sale by it.

PAR. 5. The use by a company of a word which indicates that it is engaged in manufacturing is an advantage to the company so using. The use by respondent of the name "Broadway Knitting Company," as set forth in the complaint herein, creates the impression in the minds of the trade and public that the company is engaged in the process of manufacturing certain of the articles which it sells by the method of knitting, and leads the public to believe that said respondent does actually own or operate a mill or factory in which articles sold by it are manufactured.

CONCLUSION.

That the acts, practices and activities of respondent 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 respondent and the testimony and evidence, 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, Broadway Knitting Company, cease and desist from doing business under the name and style of Broadway Knitting Company or any other corporate name which includes the word "Knitting" unless and until such respondent actually owns or operates a factory or mills in which it manufactures the knitted articles which it sells.

It is further ordered, That the respondent shall within sixty (60) days after the date of the service upon it of this order file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

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FEDERAL TRADE COMMISSION

v.

H. MAILENDER, TRADING UNDER THE UNINCORPORATED NAMES AND STYLES OF "M. RIDER & COMPANY" "QUEEN CITY SALVAGE COMPANY" "ARMY