

Complaint.

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FEDERAL TRADE COMMISSION
v.
JENKINS KNITTING MILLS 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 972—November 15, 1923.

SYLLABUS.

Where a corporation engaged in the sale of knit underwear, sweaters, hosiery, and other similar merchandise, which it purchased from the manufacturers thereof and sold direct to consumers, and neither owning, operating nor controlling any knitting mill manufacturing the knit goods sold by it, used and featured its corporate name, Jenkins Knitting Mills Co., on its labels, shipping tickets, and order blanks, and in its advertising and other trade literature, etc., with the effect of misleading the trade and public into believing it to be the manufacturer of the goods sold by it:

Held, That such misrepresentation, under the circumstances set forth, constituted unfair methods 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 Jenkins 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 one year 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 Provo, in said State, and since its incorporation has been and now is engaged in the business of selling direct to customers located in California, Oregon and Washington and various other States of the United States, knit and woven hosiery, sweaters, underwear, coats, skirts, 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 other States of the United States. In the course and conduct of its said business, respondent is and has been during all of the times mentioned in this complaint, in competition with other similarly engaged.

PAR. 2. Respondent, in the course and conduct of its said business, uses its corporate name "Jenkins Knitting Company," and has prominently displayed and does now prominently display its said name in its newspaper advertisements, letterheads, order blanks, package labels, and other stationery and literature, and has solicited and now solicits its business through its agents who travel throughout various States of the United States other than Utah, and solicits and obtains orders direct from the users and consumers of the articles sold by respondent. Said agents circulate respondent's literature above mentioned and also represent orally to their prospective customers that the respondent is the manufacturer of the articles 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 or other factory and did not at any time and does not now manufacture any of the articles offered for sale by it, and has filled and now fills the orders received by it from its customers, from merchandise purchased by it from the stock of manufacturers and others.

PAR. 4. The use by respondent of the corporate name "Jenkins 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 for the knitting of wool and other material in which is manufactured the articles sold or offered for sale by it and that persons buying from respondent are buying directly from the manufacturer and are 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, Jenkins Knitting Mills Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Findings.

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Respondent having entered its appearance and filed its answer herein, 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. The respondent, Jenkins Knitting Mills Company, is a corporation organized and existing under and by virtue of the laws of the State of Utah, with its principal place of business at Provo in said State, and since its incorporation in January, 1922, has been engaged in the business of selling direct to customers located in North and South Dakota, Montana, Idaho, Washington, Oregon, California, Nevada, Wyoming, Arizona and New Mexico, knit underwear, sweaters, hosiery, skirts and blankets, and similar merchandise, and in shipping or causing to be shipped said merchandise, from the State of Utah to its said customers at various points in other States of the United States. In the course and conduct of its said business, respondent is in competition with others similarly engaged.

PAR. 2. The respondent in the course and conduct of its business uses its corporate name "Jenkins Knitting Mills Company" and has prominently displayed and does now prominently display its said name in its advertisements, on its labels, on its shipping tickets and order blanks, and other literature, and solicits its business through traveling salesmen who travel throughout the various States hereinbefore mentioned, and solicit and obtain orders direct from the users and consumers of the articles sold by respondent. The said agents circulate the literature of the respondent above mentioned and solicit and take orders in the name and for the account of the respondent, Jenkins Knitting Mills Company. Respondent instructs its salesmen 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 whether its salesmen represent to the customers that the articles are made by respondent.

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PAR. 3. Of the knitted goods sold by respondent, about 50% of the underwear and 25% of the sweaters are made to order from measurements supplied by the customers, the remainder being bought in stock sizes at the beginning of the season from the manufacturers thereof, and orders received by respondent are filled from said stock. Only 10% of the overcoats sold by respondent are made to individual measure, the remainder being bought ready-made from the manufacturers thereof. Respondent purchases the knitted underwear, sweaters and hosiery which it sells from several knit goods manufacturers in the State of Utah, and buys its woolen goods, such as blankets, overcoats, mackinaws and skirts from woolen mills in the city of Provo, Utah. 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.

PAR. 4. The respondent does not now, nor has it at any time during its existence, owned, operated or controlled any 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 respondent of the name "Jenkins Knitting Mills 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 ap-

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proved 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 Jenkins Knitting Mills Company, Inc., cease and desist from doing business under the corporate name and style of Jenkins Knitting Mills Company or any other corporate name which includes the words "knitting" or "mills" 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.

PHILLIPS GENUINE SAUSAGE CO.

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Complaint.

FEDERAL TRADE COMMISSION

v.

MRS. E. M. HENNING, JOSEPH M. HENNING, C. WESLEY
HENNING AND WILLIAM E. HENNING, DEFENDANTS.