

Complaint.

FEDERAL TRADE COMMISSION

v.

WESTERN WOOLEN MILLS COMPANY, INCORPORATED.

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

Docket 978—January 10, 1924.

SYLLABUS.

Where a corporation engaged in the sale direct to consumers of knit underwear, sweaters, hosiery, shirts, blankets and other similar merchandise, and neither owning, controlling, nor operating any machinery, mill or factory,

- (a) Used as a corporate name a name which included the word "mills," and featured the same upon its billheads, letterheads, labels, shipping tags and other stationery;
- (b) Used order blanks containing the words "I hereby request you to make to order the following goods and ship to me";

With the effect of misleading the trade and public into believing it to be the owner or operator of a mill or factory making the articles sold by it;

Held, That such misleading use of corporate name, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Mr. H. L. Mulliner of Salt Lake City, Utah, 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 the Western Woolen Mills Co., 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 Salt Lake City in said State, and since its incorporation has been and now is engaged in the business of selling direct to customers located in Utah, Nebraska, and Montana and various other States of the United States, knit socks, stockings, sweaters, under-

Complaint.

7 F. T. C.

wear, and woven coats, shirts, and blankets and other similar merchandise, and in shipping or causing to be shipped said merchandise when sold from the State of Utah to their 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 the times mentioned in this complaint, in competition with others similarly engaged.

PAR. 2. Respondent, in the course and conduct of its said business, uses its corporate name "Western Woolen Mills Co." and has prominently displayed and does now prominently display 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 solicit and obtain, direct from the user and consumer of articles sold by respondent, orders for said articles, and orders on blanks printed and furnished by respondent by which respondent is required "to make" the articles required. Respondent also, through its said agents, has represented and does represent, orally, to its prospective customers that it is the manufacturer of the articles offered for sale.

PAR. 3. The respondent has, at no time during its existence, owned, controlled, or operated, and does not now own, control, or operate any woolen mill or other factory, and did not and does not now manufacture any of the articles sold or offered for sale by it, but has filled and 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 the respondent of the corporate name "Western Woolen Mills Co." 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 public into the mistaken belief that the respondent owns or operates woolen mills or mills in which are manufactured the articles sold or offered for sale by it and that persons buying from respondent are buying direct 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 provisions of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Western Woolen Mills Company, Inc., 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 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 thereupon this proceeding came on for final hearing and counsel for the Commission having submitted a brief, and the respondent having notified the Commission of its 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, Western Woolen Mills Company is now, and has been since March 8, 1922, 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 since its incorporation has been and is now engaged in the business of selling direct to customers located in Utah, Idaho, Montana, and various other States of the United States, knit underwear, sweaters, hosiery, shirts, blankets, and other 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 engaged in competition with others similarly engaged.

PAR. 2. Respondent in the course and conduct of its said business used and displayed its corporate name "Western Woolen Mills Company" upon its billheads, letterheads, labels, shipping tags, and other stationery, and has solicited its business through agents who travel throughout the various States of the United States other than Utah, and solicit and obtain direct from the user and consumer of articles sold by respondent, orders for said articles. These orders are taken on order blanks printed and furnished by respondent and signed by customers and prospective customers, on which are printed the words "On or about ———, 19—, I hereby request you to make

Conclusion.

7 F. T. C.

to order the following goods and ship to me." All orders are taken in the name and for the account of the respondent, Western Woolen Mills Company. Respondent does not know whether its salesmen represent to the customers that the articles which they sell are made by respondent, but the salesmen are instructed not to make any misrepresentations regarding the articles.

PAR. 3. It is only occasionally that respondent has to have made to order any of the goods which it sells. In the filling of the orders for articles taken by the salesmen from customers and prospective customers respondent did not manufacture itself, or on machinery owned, controlled, or operated by itself, the garment or article so ordered, but had the same made by some mill, or mills, either located in Provo, Utah, or at Salt Lake City, 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 has at no time during its existence owned, controlled, or operated, and does not now own, control, or operate any machinery, mill or factory, and does not now manufacture any of the articles sold or offered for sale by it.

PAR. 5. The use by respondent of the name "Western Woolen Mills Company," as set forth in the complaint herein, and the use on its order blanks of the words, "I hereby request you to make to order the following goods and ship them to me," or any other words, phrases, or sentences in which statements are made to the effect that respondent is the manufacturer of the goods or articles sold by it, creates the impression in the minds of the trade and public that the company is engaged in the business of manufacturing certain of the articles which it sells, 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.

PAR. 6. On April 9, 1923, subsequent to the issuance of the complaint herein by the Federal Trade Commission, respondent, by an amendment to its articles of incorporation, changed its corporate name to "Western Woolen & Knit Goods Company," and it is now conducting its business in the name of the Western Woolen & Knit Goods Company.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and 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 the complaint of the Commission, answer of the respondent and a stipulation as to the facts filed herein, and the Commission having made its findings as to the facts and 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, Western Woolen Mills Company, Inc., its successors, officers, directors, agents, servants, and employees cease and desist from:

(1) Doing business under the corporate name and style of Western Woolen Mills Company, or any other corporate name which includes the word "mills" unless and until such respondent actually owns or operates a mill or mills in which it manufactures the woolen articles which it sells.

(2) Using any words, phrases, or sentences on the order blanks, letterheads, or any other literature distributed by it in the course of its business, which indicate or create the impression that said respondent is a manufacturer of the articles which it sells, unless and until such respondent does actually manufacture said articles.

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.

Commissioner Murdock dissents.

200

FEDERAL TRADE COMMISSION DECISIONS.

Complaint.

7 F. T. C.

FEDERAL TRADE COMMISSION

v.

E. O. WAKEFIELD, MRS. E. O. WAKEFIELD, A. J. PLUME
AND WILLIAM PLUME CO-PARTNERS DOING BUSI-