

FEDERAL TRADE COMMISSION

v.

E. O. WAKEFIELD, MRS. E. O. WAKEFIELD, A. J. PLUME
AND WILLIAM PLUME, CO-PARTNERS, DOING BUSI-
NESS UNDER THE FIRM NAME OF MURRAY KNITTING
COMPANY.

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

Docket 982—January 10, 1924.

SYLLABUS.

Where a firm engaged in the sale direct to consumers of hosiery, sweaters, underwear, blankets and other similar merchandise, none of which products they manufactured with the exception of heavy woolen hosiery,

(a) Used a firm or trade name which included the word "knitting", and featured the same on their letterheads, order blanks, labels, and other stationery and literature; and

(b) Used the words "I hereby request you to make the following goods and ship them to me" upon their order blanks, and the wording "Manufacturers of hosiery and knit goods" upon their letterheads;

With the effect of misleading the trade and public into believing them to be the owners or operators of a mill or factory making the articles sold by them:

Held, That such misleading use of firm 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. J. Louis Brown of Salt Lake City, Utah, for respondents.

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 E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, copartners, doing business under the firm name of Murray Knitting Company, hereinafter referred to as respondents, have been and are 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. Respondents are now and have been for more than two years last past copartners, doing business at Salt Lake City, Utah, under the firm name and style of Murray Knitting Company,

and during said period of time have been and now are engaged in the business of selling direct to customers located in Utah, Nebraska, Montana, and other States of the United States, knit hosiery, sweaters, underwear and blankets and other similar merchandise, and in shipping or causing to be shipped from the State of Utah the merchandise, when sold, to their customers at various points in said States. In the course and conduct of their said business respondents are and have been during all the times mentioned in this complaint in competition with others similarly engaged.

PAR. 2. Respondents in the course and conduct of their said business have in their newspaper advertisements, letterheads, order blanks, package labels, and other stationery and literature, prominently displayed, and do now prominently display, the trade name "Murray Knitting Company," and they and their agents travel throughout their territory, as aforesaid, and solicit and obtain direct from the users or consumers of articles sold by respondents, orders for said articles and orders on blanks prepared and furnished by respondents by which respondents are requested "to make" the articles required. The respondents also through themselves and their agents have represented and do now represent orally to their prospective customers that they are manufacturers of the articles offered for sale.

PAR. 3. The respondents did not at any of the times mentioned in this complaint and do not now own, control, or operate any factory, knitting or otherwise, and did not, and do not now, manufacture any of the articles sold or offered for sale by them, but have filled and now fill the orders received by them, from merchandise purchased by them from the stocks of manufacturers and others.

PAR. 4. The use by respondents of the name "Murray 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 public into the mistaken belief that respondents own, or operate, mills or factories in which are manufactured the articles sold or offered for sale by them, and that persons buying from respondents are buying directly from manufacturers, 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served its complaint upon the respondents, E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, copartners, doing business under the firm name of Murray Knitting Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their appearances and filed their answer by their attorney of record, J. Louis Brown, Esq., and having through their counsel entered into a stipulation as to the facts with the attorney for the Commission, which stipulation, as executed and filed, provided, among other things, that, subject to the approval of the Commission, the statement of facts therein contained might be taken as the facts of this proceeding and in lieu of the testimony before the Commission, and that the Commission might proceed further upon said stipulation and said statement of facts to make its report, state its findings as to the facts and conclusion, and to enter its order disposing of the proceeding, and the Commission now being fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents are now and have been for more than two years last past copartners, doing business at Salt Lake City, Utah, under the firm name and style of Murray Knitting Company, and during said period of time have been and now are engaged in the business of selling direct to customers located in Utah, Nebraska, Montana, and other States of the United States, knit hosiery, sweaters, underwear and blankets and other similar merchandise, and in shipping or causing to be shipped from the State of Utah the merchandise, when sold, to their customers at various points in said State. In the course and conduct of their said business respondents are and have been during all the times mentioned in this complaint in competition with others similarly engaged.

PAR. 2. Respondents in the course and conduct of their said business have on their letterheads, order blanks, package labels, and other stationery and literature, prominently displayed and do now prominently display, the trade name "Murray Knitting Company," and they and their agents travel throughout their territory as afore-

said and solicit and obtain direct from the users or consumers of articles sold by respondents, orders for said articles on order blanks prepared and furnished by respondents, by which respondents were formerly requested "to make" the articles required.

PAR. 3. Respondents began business in the fall of 1921 in the city of Murray, Salt Lake County, State of Utah, and during that year did very little business; in 1922 respondents did \$20,000 worth of business, and during 1923 expect to do between \$30,000 and \$40,000 worth of business. Respondents sell and solicit their business through traveling salesmen who travel from State to State, calling directly on the customers and taking orders for the articles which they sell. These orders are transmitted by the salesmen to the company in Salt Lake City, and are filled by said respondents either from stock which they have on hand or by special orders from the manufacturers of the articles called for. Respondents instruct their salesmen not to represent that the articles which they sell are made by respondents unless in fact said articles are so made. Respondents sell knitted sweaters, underwear and hosiery, as well as blankets, woolen shirts, and leather vests. All the sweaters and underwear sold by said respondents bear a label "Murray Knitting Company" and the address of the respondents; the hosiery does not bear any label showing origin; the blankets and woolen shirts bear the label of the manufacturer of those goods in addition to respondents' label.

PAR. 4. Respondents do not manufacture any of the articles sold by them except heavy woolen hosiery. During 1922 respondents' sales of hosiery amounted to approximately \$4,000. The heavy woolen knit-hosiery sold by respondents are manufactured by them, but they do not manufacture any of the silk hosiery or silk-and-wool hosiery. Of the total hosiery sales made by respondents, approximately one-third would consist of heavy all-wool hosiery for men and women, all of which is manufactured by respondents.

PAR. 5. Respondents own and have installed in their factory, and operate, two knitting machines upon which their all-wool hosiery is made. Beginning with the year 1921 respondents have manufactured all the heavy all-wool hosiery sold by them. At or about the same time the said two knitting machines were acquired and placed in operation, respondents purchased and installed four sewing machines, which are used for making alterations and making certain special articles. During May, 1923, respondents purchased and installed two knitting machines equipped for the knitting and manufacturing of all-wool sweaters; said machines are not yet in operation, but will be in time for the season of 1924. At the present time

Conclusion.

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respondents do not knit or manufacture any of the sweaters or underwear sold by them.

PAR. 6. At the time of the issuance of this complaint respondents owned and operated the two knitting machines above mentioned, on which they knitted their all-wool hosiery of heavy grade. As set forth above, they did not then and do not now knit or manufacture any of the other articles sold by them, but purchase same from various manufacturers both in the State of Utah and in eastern States.

PAR. 7. The use by respondents of the name "Murray Knitting Company" as set forth in the complaint herein creates an impression in the minds of the trade and public that the company is engaged in the process of manufacturing certain articles by the method of knitting and leads them to believe that said respondents do actually own or operate a mill or factory in which the articles sold by them are manufactured.

PAR. 8. Prior to the issuance of the complaint herein, the blanks used by respondents bore the wording "I hereby request you to make the following goods and ship them to me," and the letterheads bore the wording "Manufacturers of hosiery and knit goods." Since the receipt of the complaint issued by the Commission the wording of the order blanks has been changed to read as follows: "I hereby request you to mail the following goods," and the letterheads do not bear the wording set forth above, but only show the name of respondents and the city in which their place of business is located.

PAR. 9. The use by respondents, on their order blanks, letterheads, or other literature of the wording "I hereby request you to make the following goods and ship them to me," and "Manufacturers of hosiery and knit goods," or any other words, phrases, or sentences in which statements are made to the effect that respondents are manufacturers of the goods or articles sold by them, creates the impression in the minds of the trade and public that respondents are engaged in the process of manufacturing certain articles by the method of knitting, and leads them to believe that said respondents do actually own or operate a mill or factory in which all the articles sold by them are manufactured.

CONCLUSION.

The practices of the said respondents, 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

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Order.

"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 respondents 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 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,"

Now, therefore, it is ordered, That the respondents, E. O. Wakefield, Mrs. E. O. Wakefield, A. J. Plume, and William Plume, co-partners, doing business under the firm name of Murray Knitting Company, cease and desist from:

(1) Doing business under the firm name and style of Murray Knitting Company or any other firm name which includes the word "knitting," unless and until such respondents actually own or operate a factory or mills in which they manufacture the knitted articles which they sell.

(2) Using any words, phrases, or sentences on the order blanks, letterheads, or any other literature distributed by them in the course of their business, which indicate or create the impression that said respondents are manufacturers of the articles which they sell, unless and until such respondents do actually manufacture said articles.

It is further ordered, That the respondents shall within sixty (60) days after the date of 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 this order has been complied with.

Commissioner Murdock dissents.

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FEDERAL TRADE COMMISSION DECISIONS.

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