

FEDERAL TRADE COMMISSION

v.

JACOB HOCHMAN AND SAMUEL LEVINE, AS INDIVIDUALS AND TRADING UNDER THE NAME AND STYLE OF HOCHMAN & LEVINE.

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

Docket 954—January 26, 1924.

SYLLABUS.

Where a firm engaged in the manufacture of men's shirts from various domestic materials and in the sale thereof to retail dealers, labeled and sold the same as "English broadcloth," with the effect of misleading the trade and a substantial portion of the purchasing public in respect of the source of the material of which said garments were made:

Held, That the sale of products labeled as above set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Jay A. Gilman of New York City, 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 Jacob Hochman and Samuel Levine, as individuals and copartners trading under the name and style of Hochman & Levine, 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. The said respondents, Jacob Hochman and Samuel Levine, are now and were at and during all the times hereinafter mentioned doing business under the firm name and style of Hochman & Levine, with their principal office and factory in the City of New York, in the State of New York. They are now and were during all the times hereinafter mentioned engaged in the business of manufacturing and selling men's shirts, and in the course of their said business have sold and do now sell said shirts to retail dealers throughout the several States of the United States and have caused

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and do now cause the said shirts when so sold to be transported from their factory in the City of New York to the purchasers thereof at points in the various states of the United States. In the course and conduct of their business said respondents have been and now are in competition with other individuals, partnerships and corporations engaged in the manufacture and sale of men's shirts in interstate commerce.

PAR. 2. During the year 1919 certain English manufacturers of cotton goods began the manufacture from Egyptian cotton and sale of a special kind of cotton fabric, which said fabric, owing to its peculiar and distinctive process of manufacture, possessed great durability, high sheen and a silk-like texture, and was widely sold in England under the name of "English Broadcloth" and extensively used in England in the manufacture of men's shirts, pyjamas and similar garments. During the year 1919 American importers imported from England considerable quantities of said cotton fabric which they sold to shirt manufacturers in this country as "English Broadcloth," since which time said fabric has been imported and widely advertised by American importers and others as "English Broadcloth" and same under said name has become very popular and in great demand by American manufacturers and also by the purchasing public and there is at the present time a great demand for English Broadcloth shirts in the United States. Since the importation of said fabric a number of American cotton goods manufacturers have manufactured and are now manufacturing a cotton fabric or cloth somewhat similar in texture and appearance to the said fabric above mentioned, but which is in fact inferior in quality and cheaper in price.

PAR. 3. Said respondents, in the course of their said business as described in paragraph 1 hereof, for more than one year last past, have manufactured, labeled, branded and sold and are now manufacturing, labeling, branding and selling men's shirts as "English Broadcloth," which said shirts are manufactured from the cotton cloth manufactured in the United States, referred to and described in paragraph 2 hereof.

PAR. 4. Such labeling and branding and sale of shirts by respondents has the tendency and capacity to confuse and deceive the purchasing public and to induce them to buy the shirts made by respondents in the mistaken belief that they are made from the material first described in paragraph 2 hereof, or from material made in England and imported into the United States.

PAR. 5. There are in the United States a number of manufacturers of men's shirts who are in competition with said respondents who do

not label, brand and sell their shirts manufactured from a cloth manufactured by American manufacturers so as to mislead and deceive the public into the belief that said shirts are manufactured from cloth manufactured in England and imported into the United States. There are also a large number of manufacturers of men's shirts in the United States who import the cotton cloth described in paragraph 2 hereof as "English Broadcloth" who label, brand, and sell said shirts as "English Broadcloth" shirts in competition with said respondents.

PAR. 6. The above alleged acts and things done by respondents are all to the prejudice of the public, and of 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, 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 a complaint upon the respondents Jacob Hochman and Samuel Levine, copartners, doing business under the firm name and style of Hochman & Levine, charging them individually and as copartners with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents having entered their appearance and filed their answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission, and the respondents, before Edward M. Averill, an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing on briefs and oral argument, 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 respondents, Jacob Hochman and Samuel Levine, from or about April 1, 1921, to on or about September 1, 1922, were partners, doing business under the name and style of Hochman & Levine, with principal office and factory in the City of New York and the State of New York, and during such period were engaged

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in the business of manufacturing and selling men's shirts, which said shirts they sold to retail dealers throughout the various States of the United States, and caused the said shirts, when sold, to be transported in interstate commerce from the factory in New York City to the purchasers thereof at various points in States of the United States other than the State of New York; and in the course and conduct of their business were engaged in competition with other individuals, partnerships and corporations engaged in the manufacture and sale of men's shirts.

PAR. 2. During the year 1919 certain American importers learned of a cotton fabric then being manufactured in England which, by reason of its construction and the quality of the yarn used, possessed a distinctive appearance and was, in fact, a new species of cotton cloth. This cloth was made from the finest grade of Egyptian long staple cotton yarn, the counts running from 156 by 84 to 144 by 76, two-ply, both ways, 100 yarn, gassed and highly mercerized, weighing about $4\frac{1}{2}$ pounds to the yard. This fabric possessed a fine, silky sheen, great durability, and resembled a fabric made of silk so closely that it was named by the English mills and dealers, "taffeta poplin."

PAR. 3. This new fabric the American importers bought, shipped over to the United States, and introduced the same to the manufacturers of shirts, who at once designated it as a "broadcloth," on account of the resemblance of this very superior cotton to a silk fabric which for a generation or more has been made in America and known as a "silk broadcloth."

PAR. 4. This new species of cotton cloth at once became known in the United States as "English Broadcloth." From the start it became very popular, the demand exceeded the supply, and between the last of 1919 and the first of 1921 a very high reputation was established for this cloth among the retail dealers in shirts throughout the States of the United States, and with the consumers, and "English Broadcloth" shirts came into great demand; and thereafter, about the middle of the year 1921, there appeared upon the market fabrics of similar appearance, but of inferior yarn, inferior workmanship, and of less durability than the fabric described above. These fabrics were in various grades and were made by both English and American mills. These fabrics were bought by American shirt manufacturers and were by some of them sold to retailers as "English Broadcloth," and often labeled "English Broadcloth," without regard to whether the cloth of which the shirts were made was imported from England or not.

PAR. 5. The word "broadcloth" is not, in England, applied to any cotton fabric, but for centuries has been applied to a very fine woolen fabric of unusual width, from which men's dress suits and women's skirts and tailored suits are made, and, in the United States, the word "broadcloth" is also used to designate the same woolen fabric. The words "silk broadcloth" were used in the shirt industry to designate a fine fabric made of silk, and from which shirts were made, and after the introduction from England, in 1919, of the fine cotton fabric described in paragraph 2, the American mills manufactured a similar cotton cloth, which was known to the shirt manufacturers in the United States as "broadcloth." The American mills do not style or designate the cotton fabric produced by them "English Broadcloth."

PAR. 6. The respondents, Hochman and Levine, in the course and conduct of their business in interstate commerce, bought the cotton fabric termed "broadcloth" made by American mills and manufactured same into shirts, which shirts they sold to retailers as "English Broadcloth," and also labeled the shirts made from the American made cloth "English Broadcloth," and the respondents also made up shirts from a cloth known as "airplane cloth," which is a fabric not of a broadcloth construction and which was not of English origin, which shirts were labeled and sold by respondents as "English Broadcloth"; and the respondents also made up and sold shirts from fabrics which were not of a broadcloth construction and which did not have their origin in England and which are not imported from England, and these shirts the respondents represented to the retailers to be made of "English Broadcloth," and labeled the said shirts "English Broadcloth."

PAR. 7. The word "English" when applied to the type of cotton fabric described in paragraph 2 of these findings denotes to the purchaser that the fabric was made in England, is the product of English mills, and among a large proportion of the retailers and a substantial proportion of the consuming public of the United States the word "English" when applied to the type of cotton fabric described in paragraph 2 of these findings, has acquired a reputation for excellence in quality and has a recognized value.

PAR. 8. The words "English Broadcloth," as applied to the cotton fabric described in paragraph 2 hereof, have not acquired a secondary meaning, but in the minds of the retailers and a substantial portion of the purchasing public are understood to signify and represent that the garment so labeled is made from a material which is made in and imported from England.

PAR. 9. The labels, "English Broadcloth," as used by the respondents, are literally false, the cloth of which the garments were made

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not being made in England and not being a product of English mills, and are calculated to, and, in fact, do deceive, not only the retailers, but a substantial portion of the purchasing public, into the belief that the shirts so labeled are made of material imported from England, this deception being due primarily to the words of the label.

CONCLUSION.

That the practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of Section 5 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 respondents, the testimony and evidence submitted, and the briefs and argument of counsel, and the Commission having made its findings as to the facts, with 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,"

It is now ordered, That the respondents, Jacob Hochman and Samuel Levine, do cease and desist from—

Using the words "English Broadcloth" as a label or brand for shirts, or other garments, unless such garments be made from broadcloth made in and imported from England.

And it is further ordered, That the respondents, 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 they have complied with the order to cease and desist hereinbefore set forth.

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