

Complaint.

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FEDERAL TRADE COMMISSION

v.

DURABLE PURE SILK FASHIONED HOSIERY, INC.

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

Docket 1099—April 12, 1924.

SYLLABUS.

Where a corporation engaged in the purchase of large quantities of hosiery from the manufacturers and in the sale thereof direct to consumers, and neither owning, controlling nor operating any mill or factory or manufacturing the hosiery offered and sold by it,

- (a) Displayed in the advertising matter used by it pictures purporting to represent the interior and exterior of the factory in which the hosiery dealt in by it was manufactured, together with matter purporting to describe the process used in such manufacture, and made statements therein to the effect that it saved the consumer manufacturer's expense in concentrating on one style and also the wholesaler's and retailer's profits;
- (b) Described said hosiery in its advertisements as "Fashioned Hosiery" and so labeled the containers thereof, the fact being that said hosiery was not made by a process which resulted in a product entitled to such a designation; and
- (c) Used its corporate name which included the words "Pure Silk," in the sale of hosiery, the tops, toes and heels of which were not composed of silk, but of cotton, and described said hosiery in its advertisements and on its labels as "Silk," "Silk Chiffon," "Pure Silk" and "Pure Thread Silk";

With the capacity and tendency to mislead purchasers and prospective purchasers into believing that in buying of it they were dealing with the manufacturer and eliminating all middlemen's profits, and also to mislead them in reference to the manner of manufacture and composition of said hosiery, and thereby induce the purchase thereof:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. Robert O. Brownell 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 Durable Pure Silk Fashioned Hosiery, Inc., 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, Durable Pure Silk Fashioned Hosiery, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal and executive offices and stock rooms located in the city of Newark, in the State of New Jersey, and is now and has been for more than one year last past, engaged in the business of selling hosiery in interstate commerce to purchasers in various States of the United States direct and/or through canvassers, solicitors, salesmen or representatives appointed by respondent as agents in its behalf and for that purpose. In receipt of orders, direct or through its agents, said respondent causes its hosiery to be shipped or transported by or through the United States mails direct to its customers from its principal office or stock rooms in the State of New Jersey to purchasers located in other states of the United States. In the course of its said business respondent was at all times hereinafter mentioned and still is in competition with other individuals, firms, partnerships and corporations similarly engaged in interstate commerce.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, for more than one year last past, as a means of inducing the public to purchase its product, has caused advertisements to be inserted in publications having general circulation throughout the several States of the United States, and has distributed circulars, catalogues, prospectuses, and other advertising matter, to its canvassers, solicitors, salesmen, representatives or agents for the use and purpose of inducing the public to purchase its product, and in which said advertising matter respondent has represented itself as the manufacturer of its product, and has caused to be inserted in the catalogues or prospectuses furnished its agents for soliciting purposes pictures of the exterior and interior of a mill or factory purporting to be and described as pictures of a mill or factory owned or operated by the respondent. The aforesaid canvassers, solicitors, salesmen, representatives or agents of said respondent exhibit said catalogues or prospectuses, and other advertising matter, to purchasers and prospective purchasers when soliciting orders from them for the purpose of inducing said purchasers or prospective purchasers to place orders for respondent's product.

PAR. 3. Respondent has not during the aforesaid time mentioned owned, controlled, or operated, and does not now own, control, or operate any hosiery mill or factory whatsoever and has not during

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said time and does not now manufacture the hosiery offered for sale or sold by it, as hereinbefore described, and has filled and now fills its said orders for said hosiery from its stock purchased by the said respondent from the manufacturers thereof.

PAR. 4. The above alleged acts and practices of respondent have the capacity and tendency to and/or do mislead or deceive the purchasers and prospective purchasers of the hosiery offered for sale and sold by respondent, as above set out, into the erroneous belief that said hosiery is being sold by the manufacturer thereof through its said canvassers, solicitors, salesmen, representatives or agents direct to such purchasers, thus eliminating all middlemen's profits and at a saving to such purchasers of the amounts of such profits, and tend to and do cause such customers to purchase said hosiery in that belief.

PAR. 5. Further in the course and conduct of its said business, respondent offers through its said canvassers, solicitors, salesmen, representatives or agents certain hosiery falsely denominated, represented and described in the aforesaid advertising literature to be what is known to the public as "Fashioned Hosiery," which is hosiery made of a fabric knit flat and of uniform texture and by the process known to the knitting trade as widening and narrowing is made to conform to the shape of the leg, retaining said uniformity of texture and being closed in the back with a stitched seam. The fact is that the hosiery offered by respondent as "Fashioned Hosiery" is what is known to the trade and public as "Seamless Hosiery," being hosiery knit over a cylinder and made to conform to the shape of the leg by tightening and loosening the threads at appropriate points and places, and/or by cutting out the fabric at the back of the ankle and sewing the same together, and in order to aid and further the aforesaid deception respondent causes the said seam to be extended the entire length of the boot of said hose in order to simulate what is known as "Fashioned" or "Full Fashioned" hosiery knit by the process hereinbefore stated. Seamless hosiery is inferior to fashioned hosiery in that the same has a tendency to stretch at the ankle and not retain its shape to the leg as hosiery known to the trade as "Fashioned" or "Full Fashioned," and the use by the respondent of the word "Fashioned" in denominating and describing its product together with the use of the said simulated seam, have the capacity and tendency to and/or does mislead or deceive the purchasers and prospective purchasers of said hosiery into the belief that its said product is fashioned hosiery or full fashioned hosiery, and tends to and does cause such customers to purchase said hosiery in that belief.

PAR. 6. Further in the course and conduct of its said business respondent offers through its said canvassers, solicitors, salesmen, representatives or agents certain hosiery falsely denominated, represented and described in the aforesaid advertising literature and on the boxes containing the same as "Pure Thread Silk Hose," when in truth and in fact the said hosiery so denominated, represented and described in both its literature and box labels is not made entirely of pure thread silk but the heel, toe and top of said hosiery are of knit cotton fabric, and the use by the respondent of the words "Pure Thread Silk Hose" in describing or denominating its product has the capacity and tendency to and/or does mislead or deceive the purchasers and prospective purchasers of said hosiery into the belief that the said product of respondent is made entirely of silk and tends to and does cause such customers to purchase said hosiery in that belief.

PAR. 7. The above alleged acts and practices of respondent 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, the Federal Trade Commission issued and served a complaint upon the respondent, Durable Pure Silk Fashioned Hosiery, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its president, Charles S. Slavin, and an agreed statement of facts having been signed by the said Charles S. Slavin, acting in behalf of said respondent, and by counsel for the Commission, the Commission having duly considered the record and the said statement of fact, makes this its report, stating its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PAR. 1. Respondent, Durable Pure Silk Fashioned Hosiery, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal offices and stockrooms located in the city of Newark in said State. It is now and for more than one year last past has been engaged in the business of purchasing hosiery from the manufacturers thereof and selling the same to purchasers in various States of the United States. It causes the hosiery when so sold to be transported from its stockrooms in the

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said city of Newark, State of New Jersey, into and through various other States of the United States to the purchasers thereof. In the course of its said business, respondent was at all times mentioned herein and still is in competition with other individuals, partnerships and corporations similarly engaged in the sale of hosiery in interstate commerce.

PAR. 2. Respondent, Durable Pure Silk Fashioned Hosiery, Inc., in the regular course and conduct of said business purchases hosiery in large quantities from the manufacturers thereof and stores same in its stockrooms in the city of Newark, New Jersey. Respondent's duly appointed agents call at the homes or business places of prospective purchasers and solicit orders by use of sample hosiery and of advertising matter which consists principally of a portfolio furnished by respondent. When an order is secured, the agent collects a deposit in cash, giving a receipt therefor; respondent upon receiving the order from the agent, ships the hosiery to the customer by parcels post, cash on delivery for the balance due. All sales are made direct to the users of the hosiery. The only advertising matter used by respondent is that which is carried by its agents as above described and shown to prospective customers for the purpose of inducing them to purchase the hosiery sold by respondent.

PAR. 3. In the portfolio of advertising matter furnished by respondent to its agents and used by them during the year 1922, appeared pictures of the exterior of a large factory building, bearing signs of "Home of Durable Hosiery" and "Durable Pure Silk Hosiery." It also contained pictures of the interior of a large factory, together with written matter purporting to describe the way in which Durable Pure Silk Fashioned Hose is made. Respondent's plan of selling such hosiery was described in said portfolio in part as follows:

Our practicable plan of selling Durable Hosiery direct to you was also conceived with the idea of saving unnecessary steps and needless expense. Three steps we have saved:

1. Manufacturers Waste Expense—Instead of selling a large variety of hosiery which involves an enormous additional expense, we are concentrating on but one style of women's and one style of men's hosiery;
2. Wholesalers Expense—We have eliminated the necessity of your paying wholesalers expense and profits by excluding him from our merchandising plan;
3. Retail Stores Waste Expense—Neither are you asked to pay the retailer for the privilege of selling you Durable Hosiery because we sell direct to you.

You benefit by our elimination of waste steps because we have simply carved out all needless manufacturing expenses and wholesalers and retailers profits and concentrated the extra saving in the production of a hose that is infinitely superior to any other hose on the market.

Other similar expressions appeared in the portfolio.

The fact is that respondent itself performs the functions of both wholesaler and retailer; it buys from the manufacturer of the hosiery and sells to the ultimate users; any profit which respondent may make is, in that sense, a "middleman's profit."

The above representations made by respondent, had the capacity and tendency to mislead and deceive purchasers and prospective purchasers, by causing them to believe that respondent was the manufacturer of the hosiery which it offered for sale and sold—thus, eliminating all middlemen's profits and effecting a saving to such purchasers of the amounts of such profits, and tended to cause such customers to purchase said hosiery in that belief.

PAR. 4. Respondent has not during the time mentioned herein owned, controlled or operated and does not now own, control or operate any hosiery mill or factory whatever and has not manufactured and does not now manufacture the hosiery offered for sale or sold by it and has filled and now fills orders for said hosiery from stock purchased by said respondent from the manufacturers thereof.

PAR. 5. In the regular course and conduct of its business as aforesaid, during the years 1922 and 1923, respondent sold hosiery in boxes labeled as "Fashioned Silk Hose." The term "fashioned" was also used to describe said hosiery in the advertising matter furnished to sales agents by respondent. The said hosiery so labeled and described was actually made by knitting on cylindrical machines and was later shaped by cutting out a small slice at the back of the ankle and sewing the stocking together again. On or about May 1st, 1923, respondent changed its advertising and its order blanks, and instead of the word "fashioned," it has since used and is now using, the word "semi-fashioned" on its order blanks only, to apply to hosiery made as above described.

PAR. 6. Fashioned hosiery is characterized by a seam at the back which is the result of joining the opposite sides of a fabric which has been knitted or woven flat and open. This fabric may be woven in form so as to make a shaped hose when closed, or the fabric may be cut to shape and joined. The best grades of "fashioned" hosiery are those knitted or woven to shape and seamed at the back, but either method produces hosiery which is fashioned, i. e., made to fit the outline of the foot, ankle and leg. In contradistinction all other hosiery is tubular or seamless produced by knitting over a cylinder in which any shaping which may be done is caused by tight knitting at some part and loose knitting at others or by cut-

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ting out a part of the tube and sewing, or by drying and shrinking the stocking on a form shaped for that purpose. The word "fashioned" as descriptive of hosiery is generally understood in the trade and by the purchasing public to mean hosiery which has been knitted or woven flat to conform to the shape of the foot, ankle and leg, and sewed together. The product which respondent formerly represented as "fashioned" or "full fashioned" and which it now represents as "semi-fashioned" is not woven flat and sewed together but is tubular woven, and the seam at the back is added in part unnecessarily to simulate fashioned hosiery.

PAR. 7. The use of the terms "fashioned" and "semi-fashioned" by respondent to describe hosiery which is shaped by cutting out a piece of the material, as described in paragraph 5 herein, has the capacity and tendency to mislead customers and prospective customers and to cause them to believe that the hosiery so described has been actually knitted to conform to the shape of the leg, according to the process described in paragraph 6, and to induce them to purchase said hosiery in such belief.

PAR. 8. In the regular course and conduct of its business as aforesaid, in its advertisements, on its labels and due to its corporate name, respondent has described hosiery which it sells and offers for sale as "silk," "silk chiffon," "pure silk," and "pure thread silk." The said hosiery is actually made with tops, toes and heels of cotton and the rest of the material pure silk.

PAR. 9. The terms "silk" and "pure silk" as applied to hosiery are commonly understood both by the trade and by the purchasing public to mean hosiery composed entirely of silk. There are several companies competitors of respondent who so label hosiery composed entirely of silk.

PAR. 10. The use of the terms "silk," "pure silk," "silk chiffon," and "pure thread silk" by respondent, to describe hosiery which has tops, toes and heels of cotton has the capacity and tendency to mislead and deceive purchasers and prospective purchasers and lead them to believe that the hosiery so described is composed entirely of silk and to cause them to purchase said hosiery in such belief.

CONCLUSION.

The practices of respondent under the conditions and circumstances described in the foregoing findings of facts are unfair methods of competition in interstate commerce and constitute a violation of the provisions 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 complaint having been heard by the Federal Trade Commission upon the complaint of the Commission and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent 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,"

It is now ordered, That respondent, Durable Pure Silk Fashioned Hosiery, Inc., its agents, representatives, servants and employees, do cease and desist from directly or indirectly:

1. Advertising, describing, or representing in any manner or form that respondent is the manufacturer of the products which it sells or offers for sale, unless and until it is in truth and fact the manufacturer of such products;

2. Advertising, labeling, or representing the hosiery which respondent sells or offers for sale as "fashioned" or "full fashioned," or by the use of the word "fashioned" in combination with any other word or words, unless such hosiery is actually made by joining the opposite sides of a fabric which has been knitted or woven flat and open in a form so that it makes a shaped hose when closed, or in which the fabric, so knit or woven, has been cut so that, when closed it makes a shaped hose.

3. Advertising, labeling, or representing the hosiery which respondent sells or offers for sale, as "silk," "pure silk," "chiffon silk," or "pure thread silk," unless such hosiery is actually made entirely of silk spun from the cocoon of the silk worm.

It is further ordered, That the respondent, Durable Pure Silk Fashioned Hosiery, Inc., shall within sixty (60) days after the service upon it of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

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