

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

Docket 1005—May 7, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of a cotton cloth resembling what is commonly known as pongee silk, and their sales agents, sold said fabric branded or labeled "De Luxe Pongee" with the capacity and tendency to mislead the trade and public in reference to its composition, and thereby to induce the purchase thereof:

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

Mr. E. J. Hornibrook for the Commission.

Mr. Guy Cunningham of Herrick, Smith, Donald & Farley of Boston, Mass., for respondents.

COMPLAINT.

Acting in the public interest, and 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 Greenhalgh Mills, a corporation, hereinafter referred to as the Manufacturing Respondent, and J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, copartners trading under the name and style of Amory, Browne & Company, hereinafter referred to as the Selling Respondents, have been and are using unfair methods of competition in commerce, in violation of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Said manufacturing respondent, Greenhalgh Mills, is a corporation organized and existing under the laws of the State of Rhode Island, with its principal office and factories located at Pawtucket, in said State. It is now, and at all times hereinafter mentioned has been, engaged in the business of manufacturing cotton fabrics exclusively, and in the sale of said fabrics through its agents, said selling respondents, to manufacturers of men's shirts, pajamas

and other similar garments, located throughout the several States of the United States, and causes said fabrics, when so sold, to be transported from its mills located in Pawtucket, Rhode Island, to, into and through other States of the United States and the District of Columbia, to the purchasers thereof. In the course and conduct of its business said respondent has been and now is in competition with other individuals, partnerships and corporations engaged in the manufacture and sale of cotton and silk fabrics in interstate commerce.

PAR. 2. Said selling respondents, J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, are copartners doing business under the name and style of Amory, Browne & Company, located at No. 31 Thomas Street, New York City, State of New York, and are engaged in the business of selling on a commission basis cotton fabrics manufactured by a number of large cotton goods manufacturers, including the manufacturing respondent named herein. In the course and conduct of their said business said selling respondents brand and label the products which are placed in their hands for sale, and in the year 1920, with the knowledge, permission and consent of said manufacturing respondent and as agent therefor, said selling respondent began to brand and label, and have since continued to brand and label one of the cotton fabrics manufactured by said manufacturing respondent, as "De Luxe Pongee," and between the dates of July, 1920, and July, 1922, said selling respondents, with the knowledge and permission of said manufacturing respondent, have sold said cotton fabric labeled by them as aforesaid to American dealers and manufacturers under the name and style, "De Luxe Pongee," and have caused said fabrics, when so sold, to be transported from the mills of respondent manufacturer at Pawtucket, Rhode Island, to, into and through other States of the United States and the District of Columbia to the purchasers thereof.

PAR. 3. The word "Pongee" placed by said selling respondents, with the knowledge and permission of the manufacturing respondent, on the labels and brands of cotton goods manufactured by said manufacturing respondent, and used in the sale of said products, as aforesaid, signifies to, and is understood by a substantial part of the trade and purchasing public as meaning a fabric composed entirely of silk and has the capacity and tendency to mislead the trade and purchasing public into the mistaken belief that such cotton fabric is a silk fabric, and to induce them to purchase said fabric in that belief.

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PAR. 4. There are a number of manufacturers of silk fabrics who brand and label their products "Pongee" and sell such products to American manufacturers throughout the United States in competition with the respondents named herein.

PAR. 5. The above alleged acts and things done by the respondents are all to the prejudice of the public and respondents' 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, Greenhalgh Mills, a corporation; J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, copartners, trading under the name and style of Amory, Browne & Company, charging said respondents with the use of unfair methods of competition in commerce, in violation of the provisions of said Act.

Respondents having entered their appearance and filed their answer, and pursuant to order, proceedings to hear and receive testimony in the above entitled matter were begun in the State of New York, City of New York, on the 18th day of June, 1923, and concluded at the same place on the same day.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Greenhalgh Mills, is a corporation organized and existing under the laws of the State of Rhode Island, with its principal place of business in Pawtucket in said State. It was organized on the 31st day of July, in the year 1906, and has an authorized capital stock of \$1,200,000. It manufactures cotton and silk fabric. Among its output is a cotton cloth of very superior weave, resembling what is commonly known as "Pongee Silk."

PAR. 2. Respondents J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, are copartners, doing business under the name and style of Amory, Browne & Company. Their places of business are New York City and Boston. They handle for respondent, Greenhalgh Mills, and sell the same on commission to manufacturers of garments and jobbers throughout

Conclusion.

the different States of the Union, a part of the output of said described cotton fabric, and have sold and handled the same from the year 1920 to the present time. They style themselves "distributors" and compete against M. C. Borden Sons and about one hundred other distributors. They buy no goods. They receive, to sell on commission, from the respondent Greenhalgh Mills, this said cotton fabric in an undyed condition. They then have this fabric dyed at the expense of the respondent Greenhalgh Mills. With the knowledge and consent of respondent, Greenhalgh Mills, the owners of the goods, they cause said fabric to be branded or labeled with a label bearing the legend "De Luxe Pongee" which label was designed by respondent Greenhalgh Mills. In the form and with the label just described these goods are sold and shipped to jobbers and manufacturers in every State in the Union by the said Amory, Browne & Company, as agents for the said Greenhalgh Mills.

PAR. 3. The methods above described prevailed between these respondents from January, 1920, to January, 1923. In January, 1923, respondents abandoned the use of the word "Pongee" on the labels attached to said cotton fabrics. Since said date respondents have called and labeled said product "De Luxe Cotton."

PAR. 4. The word "Pongee" is a silk term and implies the product of the cocoon of the silk worm.

PAR. 5. The word "Pongee" or the words "De Luxe Pongee" used by the said respondent as a brand, stamp or label in the sale of cotton fabric in interstate commerce, signifies to and is understood by a substantial part of the trade and purchasing public as meaning a fabric composed entirely of silk and has the capacity and tendency to mislead the trade and purchasing public into the belief that such cotton fabric is a silk fabric, and to induce the trade and purchasing public to purchase said fabric in such belief.

PAR. 6. There are a number of manufacturers of silk fabric who have branded, stamped or labeled their products "Pongee" and have sold such fabric to garment manufacturers and jobbers throughout the United States in competition with the cotton fabric manufactured by respondent Greenhalgh Mills when such cotton fabric was branded, stamped or labeled as set forth in paragraph 2 hereof.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is 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.

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ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the above named respondents having entered their appearance by their attorney, B. Harwood, Esq., duly authorized and empowered to act in the premises, and having filed their answer, and the testimony herein having been taken and concluded at New York City on the 18th day of June, 1923, and the examiner for the Federal Trade Commission having made and filed his finding of fact herein on the 20th day of November, 1923, and the Federal Trade Commission having made and entered its report stating its findings as to the facts, and its conclusion, that the respondents have violated 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," which said report is hereby referred to and made a part hereof.

Now, therefore, it is ordered, That respondents Greenhalgh Mills, a corporation, J. Braumhall, J. W. Bird, W. C. Baylies, Robert Amory, Charles Crehore and B. F. Meffert, copartners, trading under the name and style of Amory, Browne & Company, its or their officers, agents, representatives, servants or employees, cease and desist from using as a brand, stamp or label, or otherwise using or applying the word Pongee on or in connection with any fabric manufactured by respondent, Greenhalgh Mills, sold or to be sold in interstate commerce, unless such fabric is the product of the cocoon of the silk worm;

It is further ordered, That the respondents file a report in writing with the Commission within sixty (60) days after the date of the service upon them of this order, setting forth in detail the manner and form in which they have complied with the order herein set forth.

PHILADELPHIA BLANKET CO., INC.

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