

Complaint.

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IN THE MATTER OF

M. G. BERG AND S. S. SANSON, PARTNERS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE HERCULES HOSIERY MILLS.

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

Docket 1107—October 29, 1924.

SYLLABUS.

Where a firm engaged in the sale at retail of hosiery, purchased at cost from a manufacturing concern in which one of the partners owned an interest, and resold at prevailing retail prices, and in many instances at higher prices, and neither owning an interest in, controlling, nor operating any hosiery mill or factory;

- (a) Used the trade name "Hercules Hosiery Mills" upon the identification cards of its salesmen and in its price lists, booklets, letterheads, and other trade literature; and
- (b) Represented in its advertising and trade literature that it was selling its hosiery "direct from the mill to the customer" with a single profit, thus eliminating the middleman, by the use of such statements as, "manufacturers and distributors of men's, women's and children's hosiery", "our products are sold direct * * *". In this way we eliminate the profits of jobbers and retailers, * * *", etc., and by the display, with appropriate comment, of pictures of the factory of the concern from which it purchased, as its own, with a fictitious sign extending the length of the building, reading "Hercules Hosiery Mills", included in said pictures;

With the intent and effect of misleading and deceiving purchasers and prospective purchasers into believing that in buying from it they would save the profits of the middleman and obtain high quality hosiery at a price lower than that charged at retail stores; and

- (c) Represented certain hosiery offered and sold by it as "fashioned" hosiery, the fact being that said hosiery was the kind known in the trade and to the purchasing public as seamless hosiery which, unlike fashioned hosiery, does not retain its shape under all circumstances; with the intent and effect of misleading and deceiving purchasers and prospective purchasers:

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

Mr. G. Ed. Rowland for the Commission.

Mr. Rudolph M. Hirschwald of Philadelphia, Pa., 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 M. G.

Berg and Stanton S. Sanson, partners doing business under the trade name and style, Hercules Hosiery Mills, 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 partners doing business under the trade name and style of Hercules Hosiery Mills with their principal place of business in the city of Philadelphia, State of Pennsylvania, and are engaged in the business of selling hosiery direct to consumers in various States of the United States through house to house salesmen and canvassers appointed by respondents as agents in that behalf and for that purpose, and directly to consumers in various States upon mail-orders received by respondents for hosiery. They cause said hosiery when so purchased to be shipped from their aforesaid place of business in the city of Philadelphia, Pa., into and through other States of the United States to said purchasers thereof at their respective points of location. In the course and conduct of their aforesaid business respondents are in competition with other individuals, partnerships and corporations similarly engaged in the sale of hosiery in interstate commerce and with the hosiery trade generally.

PAR. 2. For more than a year last past in the course of their aforesaid business respondents have issued to their aforesaid salesmen and canvassers for use in and about the solicitation for orders for said hosiery, identification cards, price lists, booklets, pamphlets and other trade literature in which respondents have caused their aforesaid trade name, Hercules Hosiery Mills, to be prominently displayed in connection with statements and representations to the effect that the Hercules Hosiery Mills manufacture the hosiery so offered for sale and is selling the same direct to the consumer at a single profit to the manufacturer, thus eliminating the profits of all middlemen. In connection with said representations respondents cause to be inserted in said various publications, pictures of the exterior and interior of a mill or factory, purporting to be and described as pictures of a mill or factory, belonging to or operated by the Hercules Hosiery Mills. Aforesaid salesmen and canvassers of respondents published said statements and said literature to customers and prospective customers when soliciting orders from them and orally make similar representations to said customers.

PAR. 3. Respondents have not during aforesaid time owned controlled or operated, and do not now own, control or operate, any hosiery mill or factory whatsoever, and have not during said time, and do not now manufacture the hosiery sold and offered for sale by them as hereinbefore set out, and have filled and now fill orders for

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said hosiery received from customers in the manner hereinbefore set out, from hosiery purchased by respondents from the manufacturers thereof. The retail prices for said hosiery charged by respondents and paid by aforesaid purchasers are uniformly as high or higher than the prices charged by retail dealers in the ordinary course of trade throughout the United States and paid by the public for hosiery of substantially the same quality and purchased in the same quantity.

PAR. 4. The above alleged acts and practices of respondents have the capacity and tendency to, and do, mislead and deceive customers and prospective customers for the hosiery offered and sold by respondents as above set out, into the erroneous belief that said hosiery is being sold by the manufacturer thereof through said agents and salesmen 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 of their aforesaid business, respondents offer through said salesmen certain hosiery falsely denominated, represented and described in aforesaid 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 stitching and thereafter closed with a seam in such manner as to make the hose conform to the shape of the leg while retaining said uniformity of texture and stitching. The fact is that the hosiery so offered by respondents 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 without any seam by tightening and loosening the stitching at appropriate points and places. In order to aid and further aforesaid deception respondents cause the simulation of a seam to be knit into and upon said seamless hosiery offered by respondents as fashioned hosiery as above set out. Said false representations appearing in said literature and the use of said simulated seam by respondents have the capacity and tendency to and do mislead and deceive customers and prospective customers for said hosiery into the belief that said seamless hosiery is fashioned hosiery and tends to and does cause such customers to purchase said hosiery in that belief.

PAR. 6. The above alleged acts and practices of respondents are all to the prejudice of the public and of 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, the Federal Trade Commission issued and served a complaint upon the respondents, M. G. Berg and S. S. Sanson, partners, doing business under the trade name and style Hercules Hosiery Mills, charging them 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 herein, admitting all the allegations of the complaint, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises, makes this its report stating its findings as to the facts and conclusion :

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents are partners doing business under the trade name and style of Hercules Hosiery Mills, with their principal place of business in the city of Philadelphia, Pa., and are engaged in the business of selling hosiery direct to consumers in various States of the United States through house-to-house salesmen and canvassers appointed by respondents as agents in that behalf and for that purpose, and direct to consumers in various States upon mail orders received by respondents for hosiery. They cause said hosiery when so purchased to be shipped from the aforesaid place of business in the city of Philadelphia, Pa., into and through other States of the United States to said purchasers thereof at their respective points of location. In the course and conduct of their aforesaid business respondents are in competition with other individuals, partnerships and corporations similarly engaged in the sale of hosiery in interstate commerce, and with the hosiery trade generally.

PAR. 2. For more than a year last past in the course of their aforesaid business, respondents have issued to their salesmen and canvassers for use in and about the solicitation of orders for said hosiery, identification cards, price lists, booklets, pamphlets and

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other trade literature in which respondents used their trade name Hercules Hosiery Mills, together with statements indicating and giving the impression that the Hercules Hosiery Mills manufactured the hosiery which it offers for sale and sells, and is selling the hosiery direct to the consumer from the manufacturer with a single profit thus eliminating the middlemen. On the letterheads used by respondents in conducting correspondence connected with their business appears the name "Hercules Hosiery Mills, manufacturers and distributors of Men's, Women's, and Children's Hosiery." The same heading is employed on the circulars which they supply their representatives giving instructions as to how to take orders. In the literature supplied salesmen and representatives for use in taking orders the statement is repeatedly made that respondents are "selling direct from the mill," and advising said representatives to take up any complaints "with the mill."

On page 5 of a booklet supplied by respondents to their said representatives and salesmen called "Showers of Gold," appears the following:

WHY WE CAN SELL AT LOWER PRICES.

Our products are sold direct from the mill to the customer, through specialty salesmen only. We do not sell to the retail stores. In this way we eliminate the profits of jobbers and retailers, and being manufacturers ourselves, we are satisfied with the one profit. Think of the tremendous saving. We have no expenses, except those of manufacturing, and you have no overhead, so therefore we can place our products on the market lower than other mills.

Respondents advertise in certain magazines, one of them being the "Specialty Salesmen Magazine," in the February, 1923, issue of which appeared a large advertisement over the name "Hercules Hosiery Mills," in which it was stated "Already we are manufacturers of high-grade silk hosiery for men, women," and in another part of the same advertisement appeared the sentence, "Don't forget that the Hercules Hosiery Mills ranks as one of the largest mail-order mills in the country."

In the pamphlet called "Showers of Gold," on page 5, appears the picture of a large building with a sign on the top extending the length of the building bearing the words "Hercules Hosiery Mills." On page 6 of said pamphlet appears a picture of a large room in which are machines and operators working called "A view of the knitting room"; and on the credential cards used by the representatives and salesmen of said respondents appears on the reverse side thereof a picture of what purports to be the shipping floor of respondents' factory; on business cards supplied by said respondents to its salesmen appears the name of the respondents on

one side and on the other a picture of the aforesaid building bearing the sign heretofore referred to. These cards bearing the pictures aforesaid, and the pamphlet containing the said pictures, are supplied by respondents to their salesmen and used by them in the furtherance of their business in getting orders for said respondents' hosiery, with the intent and purpose of causing the purchasers and prospective purchasers of respondents' hosiery to believe that said pictures are of a factory owned and operated by said respondents, and the aforesaid salesmen and representatives of respondents make oral representations to their purchasers and prospective purchasers that said pictures are pictures of a factory owned and operated by said respondents. Respondent has now ceased using the pamphlet called "Showers of Gold," above referred to.

PAR. 3. Respondents have not during any of the time aforesaid owned, controlled or operated, and do not now own, control or operate any hosiery mill or factory whatsoever, and have not during said time, and do not now, manufacture the hosiery sold and offered for sale by them as hereinbefore set out, but purchase said hosiery with which they fill orders of their customers from the manufacturers thereof.

Respondent S. D. Sanson is president of a company incorporated under the laws of Pennsylvania under the name of Lincoln Hosiery Corporation, located at the corner of A Street and Allegheny Avenue in the city of Philadelphia, Pa., which company is engaged in the business of manufacturing and selling hosiery. Said respondent owns 50 per cent of the stock of said Lincoln Hosiery Corporation, the other 50 per cent being owned by Ely & Walker Drygoods Company of St. Louis, Mo. Said Lincoln Hosiery Corporation sells at cost to said Hercules Hosiery Mills the hosiery which the latter company sells in the manner aforesaid, and at a lower price than said Lincoln Hosiery Corporation sells the same class and grade of hosiery to its other customers. The Lincoln Hosiery Corporation sells about 10 per cent of its output to said Hercules Hosiery Mills, and the business of the Lincoln Hosiery Corporation amounts to from \$3,000,000 to \$4,000,000 annually. The pictures hereinbefore referred to of the building bearing the sign "Hercules Hosiery Mills," and the pictures of certain rooms in said building, used by respondents in the cards and circulars distributed by them to their representatives and salesmen are in fact pictures of the building in which said Lincoln Hosiery Corporation has its factory, and said building does not bear the sign on the top thereof as shown in said pictures, nor does it bear a sign on top thereof bearing the name "Lincoln Hosiery Corporation."

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Respondent, M. G. Berg, who is a partner of S. D. Sanson and operates with him under the trade name and style of Hercules Hosiery Mills, is not a stockholder in the Lincoln Hosiery Corporation, nor is the partnership of Berg and Sanson a stockholder of said Lincoln Hosiery Corporation, nor does said respondent Berg, or the partnership, have any financial interest whatsoever in said Lincoln Hosiery Corporation.

The partnership does not own, nor does it have any financial interest in any hosiery mill.

Said respondents distribute the said identification cards, price lists, booklets, pamphlets and other trade literature to their salesmen and representatives containing the said representations hereinbefore set forth for the purpose of misleading and deceiving the purchasers and prospective purchasers of their hosiery into the belief that said hosiery is manufactured by said respondents, and that by buying from said respondents said purchasers and prospective purchasers are able to save the middleman's profit and obtain high quality hose at a lower price than would be the case did they buy from retail stores. The same class and grade of hosiery as that sold by representatives and salesmen of said respondents, made by the said Lincoln Hosiery Corporation, is sold in retail stores throughout the country at the same price as that charged by said respondents and in many instances at a considerably lower price.

PAR. 4. Respondents as aforesaid, in the course of their business, offer through their salesmen and representatives certain hosiery which is represented in aforesaid literature and by said salesmen and representatives to be "Fashioned" hosiery. Said hosiery is described in the literature and pamphlets as follows:

Style No. 13. Ladies' Fashioned Silk Hose.

Style No. 16. Women's Extra Fine Fashioned Silk Stocking.

Style No. 151. Ladies' Outsize, 14-Thread Fashioned Pure Silk Stocking.

Style No. 181. Ladies' Worsted and Silk Fashioned Stockings, and

Style No. 181. Ladies' Machined to Show Clocked Silk and Worsted.

This hosiery described by respondents as "Fashioned" is what is known in the trade and to the public as seamless hosiery, and is knitted over a cylinder in one piece, the shaping being done either by cutting out a portion of the stocking at the ankle and sewing it together to conform to the shape of the ankle, or by shrinking the stocking at the ankle in order to make it fit. A mock seam is then put up the back of the stocking to simulate full-fashioned hosiery.

Fashioned or full-fashioned hosiery is hosiery which is knitted flat and shaped to conform to the outline of the foot, ankle and leg during the process of knitting, the opposite sides of the fabric then

being joined together, which makes the seam. Full-fashioned hosiery knit by the method above described retains its shape under all circumstances, whereas seamless hosiery or hosiery which is knitted over a cylinder or tube does not retain its shape after washing. The words "Fashioned" or "Full Fashioned" as descriptive of hosiery are 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.

PAR. 5. The use by the respondents of the term "Fashioned" to describe hosiery which is knitted over a cylinder or tube as aforesaid, and in which hosiery a mock seam is later stitched up the back, is for the purpose of misleading and deceiving purchasers and prospective purchasers into the belief that the said hosiery is full fashioned hosiery manufactured as described in paragraph 4 herein.

PAR. 6. The use by respondents of the identification cards, price lists, booklets, pamphlets and other trade literature hereinbefore referred to has the capacity and tendency to mislead and deceive, and does mislead and deceive, purchasers and prospective purchasers of their hosiery into the belief that said hosiery is manufactured by said respondents, when in fact it is not so manufactured; that by buying from said respondents purchasers and prospective purchasers are able to save the middleman's profit and obtain high quality hose at a lower price than would be the case did they buy from retail stores, when the fact is that the same class and grade of hosiery as that sold by representatives and salesmen of respondent, made by the said Lincoln Hosiery Corporation, is sold in retail stores throughout the country at the same prices as that charged by respondents and in many instances at a considerably lower price; that said hosiery sold by respondents is fashioned hosiery, whereas the hosiery so advertised and sold by respondents is seamless hosiery knitted over a cylinder, shaped at the ankle by cutting or shrinking and a mock seam put up the back to simulate full fashioned hosiery.

CONCLUSION.

That the acts, practices and activities of respondents, as hereinabove set forth and under the conditions and in the circumstances set forth in the foregoing findings as to the facts, are unfair methods of competition in commerce and constitute a violation of Section 5 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.

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ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers 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 M. G. Berg, and S. S. Sanson, partners, doing business under the name and style, Hercules Hosiery Mills, their agents, representatives, servants and employees do cease and desist from directly or indirectly—

1. Advertising, describing and/or representing in any manner or form that respondents are manufacturers of the products which they sell or offer for sale unless and until they in truth and in fact are the manufacturers of such products;

2. Advertising, labeling or representing the hosiery which respondents sell or offer 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 knitted or woven flat and open, has been cut so that, when closed, it makes a shaped hose.

It is further ordered, That the respondents, M. G. Berg and S. S. Sanson, partners, doing business under the name and style, Hercules Hosiery Mills, shall within thirty days after the service upon them of a copy of this letter 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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IN THE MATTER OF
LAPAT KNITTING MILLS AND SOBEL HOSIERY
COMPANY, INC.

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

Docket 1106—November 1, 1924.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of hosiery, and its selling agent, sold hosiery, the tops, toes, and heels of which were made of cotton and the balance of silk, branded and labeled "Pure silk hosiery of quality," and "Pure thread silk," in competition with concerns which correctly branded and labeled their products; with the capacity and tendency thereby to mislead the trade and purchasing public into believing said hosiery to be composed entirely of silk, and to induce the purchase thereof in said belief:

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

Mr. Robt. O. Brownell for the Commission.

Kirkpatrick & Maxwell of Easton, Pa., for respondent Lapat Knitting Mills.

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 Lapat Knitting Mills, a corporation, and Sobel Hosiery Company, Inc., a corporation, 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, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lapat Knitting Mills, is a corporation organized; existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal and executive offices and manufacturing plant located in the city of Easton, in the State of Pennsylvania, and is now and has been for more than six months last past engaged in the business of manufacturing and selling and distributing hosiery in interstate commerce in wholesale and/or retail quantities in various States of the United States through jobbers, commission merchants, agents or representatives. In receipt of orders from its jobbers, commission merchants, agents or