

Complaint.

IN THE MATTER OF
IDEAL BABY SHOE CO.

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

Docket 1146—December 31, 1924.

SYLLABUS.

Where an individual long engaged in the manufacture and sale of shoes exclusively for infants and young children under the trade-mark "Ideal Baby Shoe" and the trade name Ideal Baby Shoe Co.; sold said shoes under the brand "Ideal"; featured said mark and name upon the containers thereof and upon her stationery and other trade literature and in extensive advertisements; and developed a business which extended into every State and included thousands of retail dealers; and thereafter a competitor engaged in the manufacture and sale of shoes closely resembling those made by said individual, but inferior in grade and quality and sold at a lower price, adopted and featured the corporate name "Ideal Baby Shoe Co." on its letterheads, billheads, catalogues, and other trade literature and upon the containers of its shoes; with the result that the trade and public was misled and deceived in reference to the identity of the two organizations and caused to purchase such competitor's products as and for those of the older concern, to the injury of said individual:

Held, That such appropriation and use of the trade name of a competitor, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Mr. Samuel H. Holland of Chicago, Ill., for respondent.

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 Ideal Baby Shoe Co., 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 is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Chicago, in said State. It is, and for about a year last past, has been engaged in the manufacture of shoes for young infants and children and the sale thereof to wholesale and retail dealers located at points in the various States of the United

States. It causes said products when so sold to be transported from its said principal place of business in the city of Chicago, Ill., into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its aforesaid business respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale in interstate commerce of shoes for young infants and children.

PAR. 2. Among the competitors of respondent, referred to in paragraph 1 hereof, is and has been during aforesaid time, one Adra L. Day, an individual doing business under the trade name and style of Ideal Baby Shoe Company, with her principal place of business in the city of Danvers, State of Massachusetts. Since about the year 1902 said competitor has manufactured and sold to dealers in various States of the United States shoes for young infants and children. During said time said competitor has sold and distributed her said products under and in connection with her said trade name "Ideal Baby Shoe Company," which said trade name said competitor has during said time caused to be prominently displayed upon her stationery, billing, catalogues and other trade literature and upon the containers in which her said products are packed and sold, and said competitor has advertised her said products in newspapers, trade journals and other publications, in which advertisements she has caused to be prominently displayed said trade name "Ideal Baby Shoe Company." During said time said competitor has built up and enjoyed and still enjoys a large and lucrative business and valuable good will for her aforesaid products and said products and the business of said competitor are identified and associated in the mind of the trade and public with her aforesaid trade name.

PAR. 3. For about one year last past respondent has conducted its business and sold and distributed its products, all as set out in paragraph 1 hereof, under and in connection with its corporate name, to wit: "Ideal Baby Shoe Co.," which said name sometimes followed by the abbreviation "Inc." respondent causes to be prominently displayed upon its stationery, billing, catalogues and other trade literature and upon the containers in which its said products are packed and sold, and respondent has advertised its said products in newspapers, trade journals and other publications, in which advertisements it has caused to be prominently displayed its said corporate name, "Ideal Baby Shoe Co." Respondent still continues in the acts and practices in this paragraph set out.

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PAR. 4. The use by respondent of its said corporate name, as set out in paragraph 3 hereof, has had and still has the capacity and tendency to mislead and deceive the trade and public into the belief that respondent and its business are identical with said competitor and her business; that aforesaid products manufactured and sold by respondent are aforesaid products of said competitor and to cause the trade and public, acting in said belief, to deal with respondent and to buy its said products as and for the products of said competitor.

PAR. 5. The above alleged acts and things done by respondent are all to the prejudice of the public and 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 respondent, Ideal Baby Shoe Co., a corporation, charging it with the use of unfair methods in competition in commerce, in violation of the provisions of said act. The respondent having entered its appearance, and filed its answer herein, hearings were had and evidence was thereupon introduced on behalf of the Commission and the respondent before George McCorkle, an examiner of the Federal Trade Commission theretofore duly appointed. The filing of briefs and oral argument having been waived, the Commission having duly considered the record and being fully advised in the premises, now makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Ideal Baby Shoe Co., is now and has been since February 8, 1923, a corporation organized and existing under and by virtue of the laws of the State of Illinois, engaged exclusively in the manufacture and sale of shoes for infants and young children, with its factory and principal place of business at 1101 North Robey Street, Chicago, Ill. The respondent succeeded the Ideal Shoe Co., a partnership, which had been engaged in the manufacture and sale of infants' shoes at the above-mentioned place

since September, 1922. Joseph Brovar, the present president of respondent, and other incorporators of respondent, were members of such copartnership. The incorporators of respondent chose for its corporate name, as shown by a certified copy of the articles of incorporation, "Ideal Baby Shoe Co.," under which name it has since conducted its business and which name it has prominently displayed on its letterheads, billheads, catalogues and trade literature and upon the containers in which its shoes are packed and shipped. Occasionally, as in its answer filed in this proceeding, respondent has used the name "Ideal Baby Shoe Company." Respondent, since its incorporation, has sold and now sells its products to the retail trade in various States of the United States. At the present time it travels six salesmen who solicit business from and sell to retail merchants in thirteen States of the United States. When sold, respondent's products are shipped by it from its factory at Chicago to the purchasers thereof at their respective locations. In the course of its business, respondent has been and now is, in competition with other corporations, firms and individuals also engaged in manufacturing and selling and shipping infants' shoes throughout various States of the United States, in interstate commerce.

PAR. 2. Among the competitors mentioned in paragraph 1 hereof, is Mrs. Adra L. Day, of Danvers, Mass., an individual doing business under the trade name of "Ideal Baby Shoe Company." She has been doing business under said trade name since the year 1902, having her principal place of business in the city of Danvers, State of Massachusetts, and during said period of time she has manufactured shoes exclusively for infants and young children and sold her products to retail dealers and, to some extent, to jobbers located in the various States of the United States, District of Columbia and in the Dominion of Canada. During all of these years, and up to the present time, Mrs. Day has extensively advertised her business under her said trade name, causing said name to appear on all her stationery, billheads, circulars, and other trade literature and the containers in which her products are shipped; also in trade journals, especially those journals devoted to children's wear and having large circulation in the United States. Mrs. Day has also employed, since 1903, in the course of her business, the trade-mark, "Ideal Baby Shoe," which trade-mark was registered in the United States Patent Office, June 28, 1921. This trade-mark has been extensively used in advertising the shoes manufactured by Mrs. Day, and the word "Ideal," taken therefrom, has been for many years stamped upon every shoe manufactured. The business of Mrs. Day has grown to such an extent that it reaches into all of the States of the

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Union and the Dominion of Canada. About 300 persons are employed in or about the factory at Danvers, Mass. During the year 1923, her annual sales were nearly half a million dollars and her customers, consisting to a large extent of retail shoe merchants, numbered, in the year 1923, about 3,500. In the year 1923, which was the year of the incorporation of the respondent, Mrs. Day, under her above-mentioned trade name, sold her products to over 100 dealers in the city of Chicago and outlying contiguous districts. The fact that Mrs. Day was engaged in the business of manufacturing and selling infants' shoes under the name of "Ideal Baby Shoe Company" was known to the incorporators of the respondent at and before the incorporation.

PAR. 3. The shoes manufactured and sold by Mrs. Day under the name of "Ideal Baby Shoe Company" differ in method of manufacture and constituent material from the shoes manufactured and sold by respondent and are of better grade and quality, and in the usual course of trade are sold by her at prices exceeding the prices of the respondent for shoes similar in style, by at least 50 per cent. While the shoes of the respective concerns differ in quality and price, there is a general similarity between the shoes of the same pattern or style, and the ordinary observer is not likely to distinguish between them.

PAR. 4. The markets of the respondent and of the Ideal Baby Shoe Company of Danvers, Mass., cover practically the same territory in so far as the territory of respondent extends. The identity of the respondent's corporate name with the trade name of Mrs. Day and the fact that both concerns are engaged in the sale of similar products in the same territory are calculated to create, and have created great confusion in the trade, resulting in loss of business in the higher-priced shoes manufactured by Mrs. Day. The salesmen of the Ideal Baby Shoe Company of Danvers are frequently confronted with the statement of customers and prospective customers that they have purchased or have been offered the shoes of the Ideal Baby Shoe Company of Danvers, Mass., at a price much lower than that asked by the salesmen, when the fact is that the person making the statement has been dealing with the respondent under the impression that he was dealing with the Ideal Baby Shoe Company of Danvers, Mass. Many dealers having had no business transactions whatever with the Ideal Baby Shoe Company of Danvers, Mass., have sent to that concern checks in payment of goods, which goods were actually purchased from the respondent. On the other hand, the respondent has received checks

in payment of goods, which checks were intended for the Ideal Baby Shoe Company of Danvers, Mass. The use by respondent of its corporate name, "Ideal Baby Shoe Co." has the capacity and tendency to mislead and deceive, and has misled and deceived, the trade throughout the United States and the purchasing public into the belief that respondent and its business are identical with Mrs. Day and her business, and has caused the trade and public, acting in such belief, to deal with the respondent and to buy its products as and for the product of Mrs. Day and has caused the purchasing public to purchase the shoes made by the respondent under the impression that such shoes are shoes made by Mrs. Day.

PAR. 5. Since the conclusion of the hearing and taking of testimony herein respondent has filed in this proceeding a certified copy of a certificate of change of name of Ideal Baby Shoe Co. to Surwalk Baby Shoe Co., the original of which was filed in the office of the Secretary of State of the State of Illinois on November 5, 1924.

CONCLUSION.

The practices of the respondent, under the conditions and circumstances described in the foregoing findings as to the facts, constitute unfair methods of competition in commerce among the States, and are prohibited by 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 TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the plaintiff, the answer of the respondent and the testimony and evidence submitted, and the Commission having made its findings as to the facts and conclusion that 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,"

Now, therefore, it is ordered, That the respondent, Ideal Baby Shoe Co., now Surwalk Baby Shoe Co., its officers, agents and employees, do cease and desist from—

(1) Using as a part of the corporate name of the respondent, the word "Ideal" or any other word or combination of words likely to be confused with the name "Ideal Baby Shoe Company."

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(2) Using the words "Ideal" or "Ideal Baby Shoe" on its letterheads, billheads or otherwise, in connection with the sale of its shoes.

(3) Directly or indirectly suggesting by the use of any word, mark, label or otherwise that the goods of the respondent are the goods manufactured by Mrs. Adra L. Day, doing business under the trade name of Ideal Baby Shoe Company.

And it is further ordered, That the respondent file with the Federal Trade Commission, within thirty days from the date of the service of this order upon it, a report in writing stating the manner and form in which this order has been complied with, said report to have attached to it copies of all circulars, stationery, advertisements, marks, labels and other devices distributed by it or displayed to the public in connection with the sale by it of shoes in commerce in the several States of the United States.

Complaint.

IN THE MATTER OF
WALDES & COMPANY, INCORPORATED.

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

Docket 947—January 3, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of snap fasteners, exchanged its own fasteners for those of its competitors and resold the fasteners so acquired at prices far below regular prices therefor; with the result that competitors suffered in loss of customers and in reputation of their goods, had their markets generally demoralized, and were put to heavy expense:

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

Mr. Robert O. Brownell for the Commission.

Mr. Charles S. Moore of Taylor, Caskey & Moore, of Washington, D. C., for respondent.

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 Waldes & Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Waldes & Company, Inc., is a corporation organized under the laws of the State of New York in 1919, with an outstanding capitalization of \$1,000,000, with its principal office and place of business in Long Island City in that State. It is, and at all times hereinafter mentioned, has been engaged in the manufacture and sale of dress snap fasteners; and in the conduct of its business causes said snap fasteners made and sold by it to be transported to purchasers thereof from the State of New York through and into other States of the United States. In the course of said business respondent continuously has been and now is in competition with other persons, partnerships and corporations engaged in a similar business in interstate commerce.

PAR. 2. Said respondent was organized by one Jinrich Waldes, a native of Czechoslovakia, who is the principal stockholder of