

Complaint.

IN THE MATTER OF

NASHUA MANUFACTURING COMPANY, AND WALTER BAYLISS, ROBERT AMORY, AND CHARLES L. CREHORE, COPARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF AMORY, BROWNE & COMPANY.

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

Docket 1076—February 18, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of cotton blankets and other cotton goods, and its selling agents, sold blankets composed wholly of cotton labeled "Woolnap" or "Wool finish," with the effect of misleading a substantial portion of the purchasing public in respect of the composition thereof and of thereby diverting trade from truthfully labeled goods:

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

Mr. Morgan J. Doyle for the Commission.

Mr. Guy Cunningham of Herrick, Smith, Donald & Farley of Boston, Mass., 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 the Nashua Manufacturing Company and Walter Bayliss, Robert Amory and Charles L. Crehore, copartners, doing business under the name and style of Amory, Browne & Company, 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 respondent, Nashua Manufacturing Company, is a corporation organized under the laws of the State of New Hampshire, having its factories located at Nashua, in said State, and with executive offices in the city of Boston, State of Massachusetts. It is now and at all times hereinafter mentioned has been engaged in the manufacture amongst other things of pure cotton

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blankets and is in competition with other persons, copartnerships and corporations engaged in the manufacture of blankets.

The respondents, Walter Bayliss, Robert Amory and Charles L. Crehore, are copartners, doing business under the name and style of Amory, Browne & Company, having their principal office located at 48 Franklin Street, city of Boston, State of Massachusetts. They are the selling agents for the respondent, Nashua Manufacturing Company, and as such distribute all the blankets manufactured by the respondent, Nashua Manufacturing Company to various jobbers and retailers throughout the United States.

PAR. 2. The respondent, Nashua Manufacturing Company, in the regular course and conduct of its business, and in filling the orders received from and through the respondents, Amory, Browne & Company, sells blankets to jobbers, and retailers located in other States of the United States than the State of New Hampshire, and pursuant to such sales causes such blankets to be transported from its factories located, as aforesaid, in the State of New Hampshire, through, into and among the other States and Territories of the United States to the purchasers thereof.

PAR. 3. For more than two years prior to May, 1922, respondents, in the regular course and conduct of their respective businesses, sold in commerce, as aforesaid, cotton blankets manufactured by the respondent, Nashua Manufacturing Company, containing no wool whatsoever, which they advertised, labeled, and ticketed by and with the term "Woolnap" printed in large bold-faced type, to which they added the words "Pure Cotton" or "a perfect blend of the world's finest cottons" in smaller and less conspicuous type. Such advertising, labeling and ticketing was false, misleading and deceptive and was calculated to and did deceive the purchasing public, by causing them to believe that such cotton blankets were composed either wholly or in part of wool.

PAR. 4. For more than two years last past, respondents in the regular course and conduct of their respective businesses have sold and are now selling in commerce, as aforesaid, cotton blankets manufactured by the respondent, Nashua Manufacturing Company, containing no wool whatsoever, which they have labeled and ticketed and are labeling and ticketing with the term "wool finish" without indicating on such labels and tickets the wholly cotton composition of such products or the fact that such blankets contained no wool whatsoever; and have prepared or procured similar tickets or labels containing the words "wool finish" and have furnished same to customers of said respondent or other persons with intent and purpose on the part of said respondents that said tickets or labels should

be attached to said cotton blankets by said customers or other persons. Such labeling and ticketing is false, misleading and deceptive and is calculated to and does actually deceive the purchasing public by causing them to believe that such cotton blankets are composed wholly or in part of wool; and by furnishing said tickets and labels to others, as aforesaid, respondents have placed in their hands the means of deceiving and misleading the public.

PAR. 5. The sale by respondents of pure cotton blankets, containing no wool and labeled and ticketed with either the term "Woolnap" or "Wool finish," as aforesaid, and/or the furnishing of tickets and labels for use by others, as aforesaid, has and does enable unscrupulous dealers to misrepresent the composition and value of such blankets in reselling same to customers, and further, has the general tendency and capacity to enable dealers to obtain for such blankets higher prices than those justified by the grade and quality thereof and by free and open competition.

PAR. 6. Respondents' labeling and ticketing of cotton blankets containing no wool with the terms "Woolnap" and "Wool finish" and the furnishing of tickets and labels for use by others, as aforesaid, are, and each of them is, to the damage and injury of a considerable number of manufacturers of cotton blankets, who do not follow said practices or either of them.

PAR. 7. The above alleged acts and things done by 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 its complaint upon the respondents, Nashua Manufacturing Company, Walter Bayliss, Robert Amory and Charles L. Crehore, charging them with the use of unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act of Congress approved September 26, 1914.

The respondents having entered their appearances herein and filed their answers to the complaint, evidence was thereupon introduced in support of the charges stated in the complaint and on

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behalf of said respondents, before an examiner for the Commission, which evidence was filed in the office of the Commission and thereupon the matter came on for final hearing, and the Commission having considered the complaint, the answer thereto and the evidence adduced, and being fully advised in the premises and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Nashua Manufacturing Company, is a corporation organized and existing under the laws of the State of New Hampshire, having its principal place of business at Nashua, in said State. That respondents, Walter Bayliss, Robert Amory and Charles L. Crehore, are copartners and, together with other persons not named in the complaint, are doing business under the name and style, Armory, Browne & Company.

PAR. 2. That the respondent, the Nashua Manufacturing Company, is engaged in the business of manufacturing cotton blankets and other cotton goods at Nashua, N. H., and in marketing the commodities so manufactured by it through its selling agents, Amory, Browne & Company, a copartnership described in paragraph 1 hereof. It causes blankets so manufactured by it, when sold by its said selling agents, to be transported from the State of New Hampshire to, into and through other States of the United States and to foreign countries to the respective purchasers thereof. Said business has been for many years, and is now, being carried on in direct competition with other persons, partnerships and corporations also engaged in the manufacture and sale of blankets.

PAR. 3. That the respondent, Nashua Manufacturing Company, in the course of its business, manufactured, and through its said selling agents sold, blankets composed wholly of cotton, some of which it designated as "Woolnap" blankets and said respondent made use of the words "Nashua Woolnap" as a trade-mark under which said blankets have been sold since the year 1907. In the year 1917, respondents caused the words "Nashua Woolnap" to be registered in the United States Patent Office as the trade-mark of respondent, Nashua Manufacturing Company. To the aforesaid "Woolnap" blankets so manufactured and sold by respondents, respondents attached labels, which labels are particularly described in the three succeeding paragraphs.

PAR. 4. That for a period of approximately five years, from 1914 to 1918, both inclusive, there was attached to each "Woolnap"

blanket manufactured and sold by respondents, a cardboard label upon which was printed the following:

NASHUA
WOOLNAP
Trade Mark Reg. U. S. Pat. Of.
Pure Cotton

* * *

NASHUA MFG. CO.
Nashua, N. H.
U. S. A.

(Com. Ex. 1.)¹

PAR. 5. That for a period of approximately four years, from 1920 to the early part of 1924, there was attached to each "Woolnap" blanket manufactured and sold by respondents, a cardboard label upon which was printed the following:

A Perfect Blend of the World's Finest Cottons

Woolnap
NASHUA
Blanket

WARM WASHABLE
DURABLE MOTHPROOF

Blanket Comfortable Standard Size

Style K Color 8 66 x 84

Amory, Browne & Co. Selling Agents,
Boston & New York.

(Com. Ex. 2.)¹

PAR. 6. That for a period of approximately nine years, from 1914 to the early part of 1924, there was attached to each "Woolnap" blanket manufactured and sold by respondents, a small cloth label bearing the words "Nashua Woolnap." (Com. Ex. 1-a.)¹

PAR. 7. That in the course of its aforesaid business, respondents manufactured and sold, upon special orders from customers, blankets composed wholly of cotton, and at the request of such customers, respondents attached to such blankets cardboard labels upon which were printed the following:

¹ Not published.

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POLAR BEAR
WOOL XXX FINISH
BLANKETS

No. B1466 Size 66 x 80

(Com. Ex. 3.)¹

PAR. 8. That the proof adduced at the hearing of this case is not sufficient to warrant a finding to the effect that the cardboard labels mentioned and described in paragraph 4 hereof were false, misleading or deceptive, or had the tendency or capacity to mislead or deceive the purchasing public, or a substantial portion thereof, into the belief that the blankets containing such labels were composed either wholly or in part of wool.

PAR. 9. That the labels mentioned and described in paragraph 5 hereof were and are, misleading and deceptive and had and have the tendency and capacity to, and do mislead and deceive a substantial portion of the purchasing public into the erroneous belief that blankets containing such labels are composed in part of wool; that said labels contain no word or words disclosing to the purchaser the wholly cotton character of said blanket.

PAR. 10. That the labels mentioned and described in paragraph 6 hereof signified to and were understood by a substantial portion of the purchasing public to mean that blankets containing such labels were composed of materials of which at least a part was wool.

PAR. 11. That the labels mentioned and described in paragraph 7 hereof signified to and were understood by a substantial portion of the purchasing public to mean that blankets so containing such labels were composed either wholly or in part of wool.

PAR. 12. That the use of the word "Woolnap" on labels attached to blankets composed entirely of cotton, except when accompanied by words or phrases disclosing the wholly cotton character of such blankets, or by words or phrases disclosing the fact that such blankets contain no wool whatsoever, is deceptive and misleading and has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the blankets so containing such labels are composed either wholly or in part of wool.

PAR. 13. That many of respondents' competitors are engaged in the business of selling blankets to persons in States other than those in which their principal factories and places of business are located, and of causing blankets so sold to be transported from the States

¹ Not published.

in which their principal factories and places of business are located, through and into other States of the United States pursuant to such sales; that many such competitors sold and shipped and are now selling and shipping in said commerce between the States of the United States, blankets composed entirely of wool, which said blankets are truthfully labeled and branded "Wool"; many such competitors sold and shipped and are now selling and shipping in said commerce blankets composed in part of wool and in part of cotton, which said blankets contain labels or brands truthfully describing said blankets as "Part Wool"; and many such competitors sold and shipped and are now selling and shipping in said commerce blankets composed entirely of cotton, which said blankets are truthfully labeled and branded "Cotton."

PAR. 14. That the use by respondents of the labels described in paragraphs 5, 6 and 7 hereof, in the manner aforesaid, causes respondents' blankets to unfairly compete with blankets manufactured or sold by respondents' competitors and composed either wholly or in part of wool, and by the use of respondents' said labels, described in paragraphs 5, 6 and 7 hereof, customers are attracted to respondents' blankets, and trade is thereby diverted from truthfully labeled goods.

CONCLUSION.

The practices of 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 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 Commission, the answer of the respondent, the testimony and evidence submitted, the trial examiner's report upon the facts, and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the respondent has 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 respondent, Nashua Manufacturing Company, a New Hampshire corporation, and Walter Bayliss, Robert Amory, and Charles L. Crehore, copartners doing business under

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the name and style Amory, Browne & Company, and the officers, agents, representatives, servants and employees of respondents cease and desist from directly or indirectly—

(1) Attaching or causing to be attached to blankets manufactured and/or sold by respondents in interstate commerce and containing no wool whatsoever, any label or brand containing the word “wool,” alone or in combination with the word “nap” (as “wool nap”), or in combination with any other word or words, unless such label or brand shall contain other words aptly and conspicuously disclosing the fact that the blanket so bearing such label or brand contains no wool whatsoever.

(2) Using in advertisements, or on containers or otherwise in connection with the offering for sale or selling of blankets manufactured and/or sold by respondents or any of them, and containing no wool whatsoever, the word “wool” alone or in combination with the word “nap” or in combination with any other word or words, unless and except it shall be accompanied by some other word or words aptly and conspicuously disclosing and making known the fact that such blankets contain no wool whatsoever.

It is further ordered, That the respondents herein named shall, within sixty days after 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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IN THE MATTER OF
WATERPROOF PAINT & VARNISH COMPANY.

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

Docket 1096—March 5, 1925.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints, varnishes, and allied products neither procured from the Government nor manufactured for its use, nor in accordance with its specifications or requirements, featured the word "Government" in the legends on its labels, together with a picture of the Capitol, with the result that the purchasing public was misled in respect of the source, manufacture, and quality of such products:

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

Mr. M. Markham Flannery 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 Waterproof Paint & Varnish Company, 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 Massachusetts with its principal office and place of business in the city of Watertown, in said State. It is engaged in the manufacture of paints, varnishes and allied products and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said products when so sold to be transported from its aforesaid place of business in the city of Watertown, Mass., 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 of paints, varnishes and allied products in interstate commerce and with the trade generally.

PAR. 2. For more than a year last past respondent, in the course of its aforesaid business, has sold certain paint manufactured by it