

IN THE MATTER OF
BEACON KNITTING MILLS, INCORPORATED

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

Docket 1321—March 15, 1926

SYLLABUS.

Where a corporation engaged in the sale to jobbers and retailers of knitted garments for infants and children, approximately 70 per cent of which garments were made for it by "home knitters" and "home crocheters", and the balance by concerns owning and operating knitting mills or machines and other equipment; and neither manufacturing any of the merchandise dealt in by it, nor owning, controlling, or operating mills, machines, or factory equipment making such garments, nor with any interest or voice in the management of concerns owning, controlling, or operating such mills, machines, or equipment;

- (a) Used as a corporate name a name which included the words "knitting mills", and featured the same in its advertisements in trade publications, and on its letterheads, bill heads, etc.; and
- (b) Printed prominently a notice on its order blanks to the effect that it would not accept liability for delays and deliveries due to unforeseen conditions relative to labor, supplies, etc., and made such statements as "Manufacturers of Hand Crochet and Machine Made Fancy Knitted Outerwear * * *", and others of similar import, in its advertisements, trade literature, and labels, and in direct dealings with customers and prospective customers;

With the capacity and tendency to mislead and deceive customers and prospective customers into believing that in dealing with it they were making their purchases directly from the manufacturer of the garments and thereby eliminating the profits of middlemen, and obtaining advantages in service, delivery, and adjustment of accounts that could not be had through purchasing such merchandise from jobbers or other middlemen, and to cause retail dealers to represent its garments to the consuming and purchasing public as having been purchased by such dealers directly from the manufacturer, and as being offered to such public with advantages in price and service not possible in the case of goods not so secured, to the prejudice of competitors who in fact manufactured the garments dealt in by them and represented themselves as so doing, and of competitors who did not so do, or so represent themselves:

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

Mr. Henry Miller for the Commission.

Feiner, Maass & Skutch, of New York City, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the sale of knitted garments for infants and children to wholesale and retail dealers and consumers in various States, with principal office and place of business in New York City, with using misleading corporate name, misrepresenting business status, advertising falsely or misleadingly, and misbranding or mislabeling in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as alleged, neither owning, controlling nor operating any mill or factory whatsoever nor manufacturing the garments sold by it, which it purchased from others who manufactured the same and resold at a profit, engaged in the practice for about four years preceding the complaint of causing "representations and assertions to be made to its customers and prospective customers by its salesmen and agents, and * * * said representations and assertions to be set forth on its business stationery, billheads, invoices, catalogues, labels and other trade literature, to the effect that it controls and operates knitting mills and is the manufacturer of said garments in which it deals."

Respondent also, as alleged, "upon its business stationery, billheads, invoices, catalogues, labels and other trade literature causes its corporate name to be prominently set forth, and said stationery, billheads, invoices, catalogues, labels and other trade literature bearing said corporate name and said representations and assertions are sent by respondent to customers and prospective customers, and are displayed to customers and prospective customers of respondent by said salesmen and agents."

The foregoing acts and practices, as charged, have the capacity and tendency to mislead and deceive and the effect of misleading and deceiving "many of respondent's said customers and prospective customers into the erroneous belief that respondent is a business concern which controls and operates a mill or mills in which aforesaid garments sold by respondent are manufactured, and that persons dealing with respondent are buying said garments directly from the mills and from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages including advantages in service, delivery and adjustment of accounts that are not obtained by persons purchasing goods from middlemen," and also the tendency to divert and the effect of diverting business from and otherwise injuring and prejudicing competitors who manufac-

ture the garments sold by them and rightfully represent themselves as the manufacturers thereof, and competitors who purchase the garments dealt in by them and resell the same to other dealers at a profit and in nowise represent themselves as manufacturing the same, all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

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, Beacon Knitting Mills, Inc., charging it with unfair methods of 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 introduced in support of the allegations of the complaint and on behalf of the respondent before Mr. W. W. Sheppard, a trial examiner of the Federal Trade Commission theretofore duly appointed; whereupon briefs were filed by counsel for the Commission and for respondent. And thereupon this proceeding came on for decision, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Beacon Knitting Mills, Inc., is a corporation organized in the year 1920, under the laws of the State of New York, since which time it has continuously carried on and conducted its business as hereinafter set forth with its principal office and place of business in the city and State of New York. It deals in knitted garments for infants and children such as socks, bootees, caps, leggings, sweaters, drawers, shawls, and other articles of a like nature, which it sells and distributes to the wholesale jobbing trade and to retailers located throughout several States of the United States. Approximately 75 per cent of its merchandise goes to the jobbing trade and the balance to retailers. It employs traveling salesmen who solicit orders for its garments from jobbers and retailers throughout several States and it also receives orders by mail from its said customers for its merchandise. Its annual sales amount to approximately \$100,000. In filling said orders respondent causes the merchandise so sold to be transported in interstate commerce from its said place of business in the city and State of New York

through and into other States of the United States to the respective purchasers thereof. In the course and conduct of its business as aforesaid it was and still is in direct, active competition with many persons, partnerships, and other corporations likewise engaged in selling and distributing in commerce between and among the various States of the United States knitted garments such as those dealt in by respondent.

PAR. 2. For the purpose of furthering the sales of its garments, respondent advertised for more than two years last past, and still advertises, as follows in Nugent's Directory, a medium for advertising in the knit-goods trade and used generally by the jobbing and retail trade as a buyer's guide:

BEACON
Knitting Mills, Inc.
Manufacturers of
Hand Crochet and Machine Made
Links and Links
Knitted Outerwear for
Infants and Children.

In the publication entitled "Official American Textile Directory, 1923" respondent has caused its name and business to be set forth as follows:

BEACON KNITTING MILLS, Inc.;
6 W. 28th St.;
Machine and Hand-Made Goods,
Children's and Infants' Outerwear;
Sell Jobbers and Specialty Stores.
(Contract Work)

In the publication entitled "Davison's Textile Blue Book, 1923, Mills in United States and Canada," respondent caused its name and business to be set forth as follows:

BEACON KNITTING MILLS.
6 W. 28th St.,
Herman Baumgart, Pres., Treas. and Buyer,
Joseph Dreyfus, Sec.
Infants' and Children's
Links and Links Novelties.
(Contract Work)
Sell Jobbers and Retailers.

Findings

10 F. T. C.

On the letterheads used by respondent in the conduct of its business its corporate name and business is conspicuously displayed and described as follows:

BEACON KNITTING MILLS, INC.
Manufacturers of
Hand Crochet and Machine Made
Fancy Knitted Outerwear and Novelties
for infants and Children.

On respondent's billheads and order blanks used in its business its name and business is conspicuously set forth as follows:

BEACON KNITTING MILLS, INC.
Manufacturers of
Fancy Knitted Outerwear

On said order blanks the following words are prominently displayed in addition to those set forth above:

NOTICE.—On account of unforeseen conditions, relative deliveries of yarns, getting supplies of needles, labor situations, etc., we must be relieved from liability, should any of the above conditions beyond our control make deliveries on this order or part of it practically impossible. We do not accept cancellations unless by agreement, special labels must be furnished without cost to the mill.

Said order blanks are used by respondent for making and recording sales of its garments and a duplicate original of each of such orders is supplied to the respective customers for their guidance in completing the transaction. Also the billheads and letterheads containing the words and phrases set forth above are used by respondent in sales communications to, and transactions with, customers and prospective customers. Representations and assertions of import similar to those set forth above were and are also made by respondent's salesmen to its customers and prospective customers in the course of soliciting and making sales of its merchandise. Respondent places its own labels only on the boxes in which it ships its merchandise to its retail customers. These labels contain the following words in conjunction with a trade-mark used by respondent and consisting of a representation of a beacon casting a shaft of light:

BEACON
All of our merchandise is manufactured
under strictly sanitary conditions.

The foregoing representations and assertions have been employed by respondent for more than two years last past in the course and conduct of its business.

PAR. 3. Approximately 70 per cent of the respondent's merchandise are hand-made garments. Respondent does not control or operate a factory plant or manufacturing establishment where employees are engaged and supervised in the production of said hand-made garments; but same are produced by individuals residing at various points throughout several States and who are usually referred to in the knit-goods trade as "home knitters" and "home crocheters" and to whom respondent ships yarns, which in turn are knitted or crocheted by said persons in their respective homes into the finished garments in accordance with a sample garment furnished by respondent and used as a model by such home knitters and crocheters. Said garments are then shipped to respondent who pays such home knitters or crocheters an agreed price per garment for the services performed in making the same as aforesaid. There are approximately 1,200 individuals scattered throughout the country who knit and crochet such garments for respondent in their respective homes. The balance of the garments in which respondent deals, being approximately 30 per cent, are machine made and are obtained by it as follows:

Respondent supplies yarns, silks, and other raw materials to various other persons and corporations owning and operating knitting mills or knitting machines and other necessary manufacturing equipment, who, according to agreement with respondent and by means of said knitting mills and knitting machines and other necessary factory equipment, manufacture said yarns, silks, and other raw materials into the machine-made garments dealt in by respondent. Said garments so manufactured are shipped in bulk to respondent's place of business in New York City and respondent is billed or charged at an agreed price per garment by said owners and operators of said machines and knitting mills for the services so performed in manufacturing said yarns, silks, and other materials into garments as aforesaid.

PAR. 4. In truth and in fact respondent is not a manufacturer of any of said merchandise in which it deals; nor is a concern marketing knit garments obtained by it in the same way that respondent acquires its merchandise, as aforesaid, generally considered among the knit goods trade to be a manufacturer of such garments. Respondent neither owns, controls, nor operates said mills, machines, or factory equipment in which its machine-made garments are manufactured, nor does it have any interest whatsoever in, or control or voice in the management of, said persons or corporations owning, controlling, or operating said mills, machines, or other factory equipment. Such services performed by the owners and operators of said knit-

ting mills, knitting machines, and other factory equipment as aforesaid is commonly known in the knit goods trade as "contract work," and the owners and operators of said mills, machines, and factory equipment are known in the trade as "contractors" as well as manufacturers.

PAR. 5. Respondent's use of the words "Knitting Mills" in its corporate name, and of the said representations and assertions, all as set forth in paragraph 2 hereof, are deceptive and are calculated, have and had the capacity and tendency, to mislead and deceive respondent's customers and prospective customers into the erroneous belief, (1) that respondent is a business concern which owns, controls, or operates knitting mills or machines in which the machine-made garments dealt in by it are manufactured; (2) that respondent is the manufacturer of the merchandise in which it deals, and; (3) that customers in buying from respondent are buying directly from the manufacturer of such articles and from the mills in which said garments were made and are thereby eliminating the profits of middlemen and obtaining various other claimed advantages, including advantages in service, delivery and adjustment of accounts that could not be obtained by purchasing such merchandise from jobbers or other middlemen. The use by respondent of the words "knitting mills" in its corporate name and of aforesaid representations also has the capacity and tendency in the regular course of business to cause retailers when selling respondent's goods to falsely represent to their customers, the consuming and purchasing public, that such retailers obtained said garments direct from the mills or manufacturer and are thereby enabled to give such consuming purchasers alleged advantages of price and service that would not be possible were said garments to have been purchased from jobbers or other middlemen by such retailers.

PAR. 6. There are among the competitors of respondent in the knit-goods trade many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof and/or the operators of mills in which their said garments are made; there are others of said competitors who obtain the garments in which they deal in the same way and by the same means that respondent obtains its garments, as hereinbefore set out, but who in no wise represent that they manufacture their said garments or are the owners or operators of mills in which their machine-made garments are manufactured. The practices of respondent as set forth in paragraph 2 hereof have the capacity and tendency to and do unfairly divert business from said competitors.

CONCLUSION

The said practices of respondent under the conditions and circumstances set forth 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 record and the briefs, and the Commission having made its findings as to the facts and 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 the respondent, Beacon Knitting Mills, Inc., its officers, agents, representatives, servants and employees cease and desist:

(1) From using the words "knitting mills", or either of them, or words of like import, in or as a trade name or corporate name for carrying on the business of selling and distributing machine-made knit garments in interstate commerce and until the respondent actually owns or directly controls or operates a mill or mills in which said garments are manufactured or produced.

(2) From making, in connection with the sale and distribution of knit garments in interstate commerce, representations through advertisements, circulars, business stationery, trade names, or in any manner whatsoever, to the effect that respondent is the manufacturer or maker of the garments dealt in by it, (a) when such garments as may be machine-made were in fact not manufactured in a mill, or factory, directly controlled or operated by respondent; and/or (b) when any of such garments as may be hand-made were produced by persons who are commonly known in the knit goods trade as "home knitters" and "home crocheters."

It is further ordered, That respondent, Beacon Knitting Mills, Inc., shall within 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.

IN THE MATTER OF
HOUBIGANT, INCORPORATED

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

Docket 1250—April 2, 1926

SYLLABUS.

Where a corporation engaged in the sale of perfumery and toilet articles to retail dealers, with some six thousand customers, and constituting one of the largest perfumery dealers in the United States; in pursuance of a policy directed to the maintenance of the prices fixed by it for the resale of its merchandise to the consuming public, which prices it set forth in its catalogues together with the phrase "Established Selling Prices," and terms and conditions of sale,

- (a) Secured promises and agreements from customers for the resale of its articles and merchandise at such established prices and generally sold its merchandise upon such promises;
- (b) Secured from all its dealers in localities where price cutting was occurring, agreements thereafter to observe established prices, acting at times upon its own initiative, but more often upon the complaint of a customer dealer and in cooperation with dealers disposed to observe its prices;
- (c) Requested dealers to investigate and report price cutting in order that it might eliminate the same by refusing further sales to the price cutter or by securing his assurance that he would observe established prices in the future;
- (d) Refused further sales to price cutters in many instances and in many instances secured assurances of future observance of its prices as a result of investigations made by it in response to reports of price cutting received from its dealers, and notified reporting dealers of action taken;
- (e) Requested and procured from salesmen and other agents, reports and information as to price cutting by its dealers and acted upon such information by refusing further sales to the price cutter or securing his assurance that he would thereafter observe established prices;

With the result that retail dealer customers generally throughout the United States sold its articles of merchandise to the consuming public at its established prices, dealers were prevented from selling the same at such lower prices as they might consider warranted by their respective costs of operation, and competition in the merchandise in question was suppressed and hindered:

Held, That such a plan of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

Mr. Alfred M. Craven for the Commission.

Hornblower, Miller & Garrison (*George S. Hornblower* and *A. DeWitt Mason* of counsel), of New York City, for respondent.