

IN THE MATTER OF
WESTERN WOOLEN MILLS COMPANY

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

Docket 1365—June 8, 1926

SYLLABUS.

Where a corporation engaged in the sale of knitted or woven products such as blankets, underwear, etc., bought by it from manufacturers and others and sold at a profit to retail dealers and the consuming public through advertisements, letters, circulars and other trade literature and through traveling salesmen, and neither owning, operating, nor controlling any mill or any other manufacturing establishment, used as a corporate name a name which included the words "woolen mills" and featured the same in its advertisements and on its labels, shipping tags, letterheads, order blanks, and other business stationery, and in its letters, pamphlets, and other trade literature and in the written and oral representations of its traveling salesmen, together with such representations and assertions as "DIRECT FROM MILL TO YOU. Buy Your Sweaters, Blankets, Underwear, Hosiery, Leather Vests, Overcoats, Knitted Novelties at a GREAT SAVING," "* * * Knitters of Fine Underwear, Ribbed Sport Coats & Jumbo Sweaters," "* * * Our Name is Your Guarantee. FROM MILL TO CONSUMER"; with the effect of misleading and deceiving purchasers and prospective purchasers into believing it to be the manufacturer of the aforesaid merchandise, which it sold and distributed direct to the consumer at a saving to such consumer of the charges and profits of all middlemen, and of unfairly diverting trade from and prejudicing competitors who as manufacturers sold their products directly to the consuming public under truthful representations, and competitors who did not manufacture the products dealt in by them and in nowise represented themselves as so doing:

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

Mr. Henry Miller for the Commission.

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 Minnesota corporation, engaged in the sale of knit garments for men, women, and children, and other articles of wearing apparel, direct to the consuming public in various States, and with principal office and place of business in Minneapolis, with using misleading corporate name, misrepresenting business status, and adver-

tising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that, neither owning, nor operating any mill or mills whatsoever, but purchasing the commodities dealt in by it from the manufacturers thereof and reselling the same at a profit to itself, it set forth its name, "Western Woolen Mills", in its advertisements and in newspapers, magazines, and periodicals of general circulation throughout the United States or in certain sections thereof, and in its trade literature, and upon its letterheads, billheads, and other business stationery, and upon the sample cases, circulars, price lists, leaflets, and other trade literature furnished to the salesmen through whom, in addition to its advertisements, it solicited orders, together, in some instances, with the statement "direct from mill to you. Buy your sweaters, blankets, underwear, hosiery, leather vests, overcoats, knit novelties at a great saving," and other statements of like import; with the capacity and tendency to mislead and deceive the consuming public into believing it to be the manufacturer of the commodities sold by it, and to be supplying the same to such public "to the elimination of middlemen, and at a corresponding advantage and saving in price to the purchaser, and to cause many among the consuming public" to purchase its commodities in such belief and to divert business from and otherwise injure and prejudice competitors who manufacture and sell the commodities dealt in by them directly to such public, and competitors who purchase such commodities from the manufacturers thereof and resell the same to the consuming public at a profit over and above the cost to them of such commodities and without in anywise representing themselves as manufacturers thereof; "all to the prejudice of the public and of 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, Western Woolen Mills Company, a corporation, charging it with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and an agreed statement as to the facts having been made and filed in which it is stipulated that the facts therein recited may be taken as the facts in this

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proceeding, and in lieu of testimony, and upon such facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and its conclusion and enter its order disposing of the proceeding.

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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Western Woolen Mills Company, is a corporation organized in June, 1923, under the laws of the State of Minnesota, with its principal office and place of business in the city of Minneapolis, Minn. Since its organization it has been and now is engaged in the business of buying, selling and distributing to retail dealers and the consuming public throughout numerous States of the United States, particularly the States of Montana, South Dakota, North Dakota, Michigan, and Minnesota, knitted or woven products such as blankets, underwear, stockings, caps, bootees, sweaters, wraps, coats, knitted novelties, and other knitted or woven garments for men, women, and children, which business it has conducted at all times herein mentioned under the conditions and circumstances and by the methods hereinafter set forth. Respondent purchases its supply of said merchandise in which it deals from various manufacturers and other dealers, and causes same to be delivered to it at its place of business in Minneapolis, Minn., where it carries such merchandise as its stock in trade.

At certain stated prices fixed by it respondent offers for sale to, and solicits and obtains orders from, the general purchasing public for said products through and by means of advertisements of said products which it causes to be inserted from time to time in newspapers, magazines, and similar publications of general circulation throughout numerous States. Respondent also sells its said commodities at its stated prices through and by means of a large number of traveling salesmen, who, on behalf of respondent, call upon its customers and prospective customers, particularly its consumer-customers which number many thousands, in a house-to-house canvass, and solicit and obtain orders from such customers for the purchase of respondent's said products. Further, respondent offers for sale and sells said products at its stated prices, through and by means of letters, circulars, pamphlets, leaflets and similar trade literature which it causes to be mailed from time to time to its

customers and prospective customers throughout numerous States of the United States from its said place of business in Minneapolis, Minn.

As a result of the aforesaid solicitation of trade by its traveling salesmen and through the aforesaid advertisements in newspapers, magazines, and similar publications, and also through said letters, circulars, pamphlets, leaflets, and similar trade literature, respondent receives, by mail and through its traveling salesmen, large numbers of orders from its customers for the purchase of respondent's said products at its stated prices. In filling said orders and pursuant thereto, respondent supplies its customers with the products so ordered by causing said merchandise so sold to be transported in interstate commerce from its place of business in Minneapolis, Minn., through and into other States of the United States and to be delivered to the respective purchasers thereof in such other States; and respondent has at all times herein mentioned continuously carried on such commerce between and among the several States of the United States by the methods and means hereinbefore set forth. In the course and conduct of its aforesaid business, respondent is, and has been since the date of its organization, engaged in direct active competition with many individuals, partnerships, and other corporations engaged in the business of selling and distributing similar and like knitted or woven products in commerce, between and among the several States of the United States, particularly the States of Montana, South Dakota, North Dakota, Michigan, and Minnesota.

PAR. 2. At all times since the date of its organization in June, 1923, respondent carried on and conducted its aforesaid business in and under its corporate name; and in its said advertisements in newspapers, magazines, and similar publications of general circulation, and on the labels, shipping tags, letterheads, order blanks, and other business stationery which it used in conducting said business; also, in the aforesaid letters, pamphlets, circulars, leaflets, and similar trade literature, and through the written and oral representations of its traveling salesmen, it prominently and conspicuously set forth and featured its name and business as "Western Woolen Mills Co."; "Western Woolen Mills Company, Inc."; "Western Woolen Mills, Inc."; or "Western Woolen Mills" severally and in conjunction with such representations and assertions as "DIRECT FROM MILL TO YOU. Buy Your Sweaters, Blankets, Underwear, Hosiery, Leather Vests, Overcoats, Knitted Novelties at a GREAT SAVING"; "Western Woolen Mills, Inc., Knitters of Fine Underwear, Ribbed Sport Coats & Jumbo Sweaters"; "Western Woolen Mills, Incorporated. Our Name is Your Guarantee. FROM MILL TO CON-

SUMER", and other representations, statements and assertions to the effect that respondent is the owner and operator of the mills in which its aforesaid products are produced and is selling and distributing said products direct from such mills to consumers.

PAR. 3. Respondent neither owns, operates, nor controls any mill, mills or other manufacturing establishment in which its said products are manufactured, and at no time during its entire existence has respondent ever owned, operated or controlled any such mill, mills, or manufacturing establishment. After purchasing its said merchandise from various manufacturers and other dealers, as set forth in paragraph 1 hereof, respondent has always resold and still resells same at prices which net it a profit over and above the cost of such products to itself. Respondent is a middleman or intermediary merchant between the mill or manufacturer and the consumer. Those who purchased said merchandise from respondent were not thereby purchasing same from the mill or manufacturer producing such merchandise nor were such purchasers thereby eliminating or saving the profits of all middlemen.

PAR. 4. The aforesaid use by respondent of its corporate name containing the word "Mills" and said assertions, statements and representations of "Direct From Mill to You. Buy Your Sweaters, Blankets, Underwear, Hosiery, Leather Vests, Overcoats, Knitted Novelties at a GREAT SAVING"; "Western Woolen Mills, Inc., Knitters of Fine Underwear, Ribbed Sport Coats and Jumbo Sweaters"; "Western Woolen Mills, Incorporated, Our Name is Your Guarantee. From Mill to Consumer", and said other representations, statements and assertions to the effect that respondent is the owner and operator of the mill or mills in which said products are manufactured, either alone or in conjunction with each other, has and had the capacity and tendency to, and did, mislead and deceive purchasers and prospective purchasers of said commodities into the erroneous belief (a) that respondent is the manufacturer of said products and is the owner and operator of a mill, mills or manufacturing establishment in which said products were manufactured; (b) that in selling and distributing said merchandise from itself to consumer, respondent is thereby selling and distributing same direct from manufacturer or producer to consumers to the elimination of the charges and profits of all middlemen with a corresponding advantage and saving in price to said purchasers.

PAR. 5. Among the competitors of respondent referred to in paragraph 1 hereof, there are many manufacturers who sell their competing products directly to the consuming public under truthful representations. There are also many others among said competitors who

buy the competitive products in which they deal from manufacturers and other dealers and resell same to the consuming public and to dealers at a profit over and above the cost to said competitors, and who in no wise represent that they manufacture the commodities in which they deal or are the owners and operators of mills in which said products were manufactured. The representations, assertions and statements used by respondent as set forth in paragraph 2 hereof tend to and do unfairly divert trade from said competitors, and are to the prejudice and injury of the purchasing public.

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 complaint of the Commission and the statement of facts agreed upon by the respondent and counsel for the Commission, 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, Western Woollen Mills Company, its officers, directors, agents, representatives, servants and employees, cease and desist—

(1) From using the words "mill" or "mills", or words of like import, in or as a corporate name or trade name for carrying on the business of selling and distributing knitted or woven products in interstate commerce, unless 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 knitted or woven products in interstate commerce representations or assertions through newspaper advertisements, catalogues, posters, circulars, business stationery, or in any other manner whatsoever, to the effect—

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(a) That respondent is the manufacturer of or the owner and operator of mills producing said knitted or woven products, and/or

(b) That said knitted or woven products come directly from mill or manufacturer to purchaser or consumer, unless and until respondent actually owns, operates or controls a mill or factory by which said products are manufactured or produced.

It is further ordered, That respondent, Western Woolen Mills Company, shall within sixty 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.

Complaint

IN THE MATTER OF
COHN-HALL-MARX COMPANY, A CORPORATION

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

Docket 1261—June 9, 1926

SYLLABUS.

Where a corporation engaged in the importation and finishing of cotton and other fabrics and in the sale thereof to makers of clothing and dealers, sold an imported English cotton fabric with an appearance which closely resembled silk, described and advertised as "COCOON" and "Cocoon Cloth", together with labels bearing the trade-mark "COCOON Reg'd. Imported English Broadcloth", to be attached by manufacturing customers to the neck bands of shirts made from the said fabric; with the tendency and capacity to deceive the purchasing public in substantial numbers and induce the purchase of such shirts by the ordinary purchaser as and for shirts made in whole or in part from the product of the silk worm: *Held*, That such practice, under the circumstances set forth, constituted unfair methods of competition.

Mr. Alfred M. Craven for the Commission.

Mr. John Walsh of Washington, D. C., 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 importation of cotton fabrics and in converting the same so as to simulate silk in appearance and finish, and in the sale thereof in interstate commerce to wholesalers, jobbers, and manufacturers of wearing apparel, with principal office and finishing plant in New York City, with naming its product misleadingly, assuming or using misleading trade name or brand, 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, for more than one year last past, has represented, described and advertised a cotton fabric imported, finished and sold by it as above set forth, "Cocoon Cloth"; has adopted the word "cocoon" as a trade name, brand or label therefor, and furnished such brand or label to wholesalers, jobbers and manufacturers of wearing apparel, which brand or label is attached to garments manufactured from said fabric, and sold to the purchasing