

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

and consuming public thus branded or labeled; and has affixed to its said cotton fabrics, when marketed in bolt, the brand or label "cocoon"; with the result of aiding, abetting and assisting "retailers and other persons to use unfair methods of competition against other competitors who do not market their products with false and misleading brands and labels", in the practice of supplying the aforesaid brand or label to wholesalers, jobbers and manufacturers, as above set forth, and with the capacity and tendency to mislead and deceive purchasers and prospective purchasers of the aforesaid products into believing the same to be composed of silk in whole or in part and to cause them, and with the effect of causing them, to purchase such fabrics in that belief,¹ and of unfairly diverting business from and otherwise prejudicing and injuring competitors who manufacture fabrics made in whole or in part of silk, and garments made of such fabrics, and competitors who manufacture and sell cotton fabrics similar to those herein concerned without misrepresenting the composition thereof; "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 its complaint upon the respondent, Cohn-Hall-Marx Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the

¹ Paragraphs 4 and 5 of the complaint, relative to the meaning and use of the words "cocoon" and "cocoon cloth," read:

PAR. 4. That the word "cocoon" has for a long period of years been associated with fabrics composed in whole or in part of silk means and is generally understood by the purchasing public to mean that the fabric to which it is applied is made in whole or in part of silk, the product of the silk worm. The use by respondent of the word "cocoon" in describing its said products which are not composed of silk in whole or in part, and the use by said respondent of the word "cocoon" as a trade name and label for its said products, either independently or in conjunction each with the other, have the capacity and tendency to mislead and deceive the purchasers and prospective purchasers of said cotton fabrics into the belief that the said fabrics are composed of silk in whole or in part and tends to and does cause said purchasers to purchase said fabrics in that belief.

PAR. 5. That the use by the said respondent in its advertisements and advertising matter of the words "cocoon cloth"; and the use by the said respondent of the trade-name, brand or label "cocoon" either independently or in conjunction each with the other in the sale or offering for sale of its cotton fabrics or the garments manufactured from said cotton fabrics, have the tendency and capacity to mislead and deceive the purchasing public into the erroneous belief that the said cotton fabrics or garments manufactured from said cotton fabrics branded or labelled "cocoon", are composed of silk in whole or in part, and tends to and does cause said purchasers to purchase same in that belief.

provisions of section 5 of said act of Congress, approved September 26, 1914. The respondent having entered its appearance and filed its answer herein, and the chief counsel for the Federal Trade Commission and counsel for respondent having thereafter signed and filed a stipulation containing an agreed statement of facts, and having therein stipulated that the said statement of facts shall be taken in lieu of testimony before the Commission in support of the charges stated in the complaint and in opposition thereto, and that said Commission might proceed further upon the said agreed statement of facts to make its report in the proceeding and its findings as to the facts, and enter its order disposing of the proceeding without briefs or oral argument:

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 its conclusions drawn therefrom:

FINDINGS AS TO FACTS

PARAGRAPH 1. Respondent, Cohn-Hall-Marx Co., is now and has been since 1912 a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at the City of New York in said State. It is, and has been during its corporate existence, engaged in the business of importing, finishing, and selling throughout the United States to makers of clothing and dealers, cotton and other fabrics.

In the course and conduct of its business respondent imports and has imported since 1919 from England, a certain fabric made entirely of cotton, known quite generally in the United States as "English Broadcloth," which fabric is and has been since its first manufacture in 1918 extensively used in the United States and other countries as a material for the manufacture of men's shirts and other articles.

Respondent does now sell and has since 1919 sold such material to manufacturers of men's shirts and other garments and also to dealers in cotton goods throughout the United States and transports and has transported in interstate commerce said material when sold, from its principal place of business in the State of New York to the purchasers thereof located in other States than New York, some of whom are located in each State of the United States.

In the course and conduct of its said business and especially in relation to the selling and transporting of English Broadcloth as in this paragraph recited, respondent is and has been since 1919 in competition with many other persons, firms, and corporations also engaged in selling and transporting in interstate commerce English

Conclusion

10 F. T. C.

Broadcloth and also material for the manufacture of men's shirts and other articles composed in whole or in part of silk from their respective places of business in the United States, to purchasers located in the various States of the United States.

PAR. 2. The respondent has for a number of years applied to its best grade of English Broadcloth the word "Cocoon," which word has been registered on respondent's application by the United States Patent Office as a trade mark. Respondent has described and advertised its best grade of English Broadcloth as "Cocoon" and "Cocoon Cloth" and has furnished for a number of years and does now furnish to its shirt manufacturing customers labels with the purpose that its said manufacturing customers shall attach said labels to shirts manufactured from the grade of English Broadcloth to which the respondent has applied the trade mark "Cocoon." Said manufacturing customers have attached and do attach, usually to the neckband of the shirts manufactured by them out of said material purchased from respondent, the said label, and have sold and do now sell said shirts, with the label thus attached, to retail merchants dealing in men's shirts throughout the United States who sell said shirts, with said label attached, to the purchasing public. The label which has been used by respondent and in turn by its customers as in this paragraph recited, for over two years last past, reads as follows:

COCOON
Reg'd.
Imported
English Broadcloth.

PAR. 3. The material, English Broadcloth, mentioned in paragraph 1 hereof is made entirely of cotton, highly mercerized and otherwise treated, so that when said material is finished it closely resembles silk. There is no fabric made from cocoons except silk, which is made from the cocoon of the silk worm.

PAR. 4. The label set out in paragraph 3 hereof as used by respondent and furnished by it to its customers as heretofore described has the tendency and capacity to deceive the purchasing public in substantial numbers, and to induce the ordinary purchaser to purchase shirts upon which such label is attached, as and for shirts made from silk in whole or in part the product of the silk worm, to the injury and prejudice of the purchasing public and the competitors of respondent.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods

195

Dissent

of competition in 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 and an agreed statement of facts filed herein, 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, Cohn-Hall-Marx Co., its officers, agents, and employees, do cease and desist from:

Furnishing to its customers, to be affixed to garments unless such garments to be made of silk, the product of the silk worm, in whole or in part, labels in which the word "Cocoon" appears unless there further appears immediately under and in close proximity to the word "Cocoon," the words "All Cotton" in equally conspicuous type as the type used for the word "Cocoon."

It is further ordered, That the respondent, Cohn-Hall-Marx Co., shall within sixty days after the service upon them of a copy 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.

Commissioners Nugent and Thompson dissented, and Commissioner Nugent filed the attached memorandum of dissent.

Dissent by Commissioner Nugent

I believe that an order to cease and desist should be issued against the respondent, and I dissent from the order issued by the majority of the Commission solely because I doubt that it can be enforced if violated.

No evidence was taken in the case. The facts were stipulated. I am of the opinion that certain necessary findings of fact made by the Commission are not warranted as they consist of conclusions drawn from the facts stipulated.

If the findings of fact are not, in law, sufficient, and I do not believe they are, the order based thereon can not be enforced.

IN THE MATTER OF
J. W. KOBI 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 1297—June 18, 1926

SYLLABUS.

Where a corporation engaged in the manufacture of preparations for the hair, and in the sale thereof to wholesalers and retailers; in pursuance of a policy directed to the maintenance of uniform prices for the sale of its products at wholesale and at retail,

- (a) Issued and circulated lists indicating the desired resale prices among its vendees and prospective vendees and made it generally known to both wholesale and retail dealers that it expected and required them to sell its product at the prices indicated under penalty of refusal of further sales;
- (b) Solicited and received from customers information and evidence relative to price cutting by other customers and employed its sales representatives and agents to secure and report such information and evidence;
- (c) Made use of information secured as above set forth to induce price cutters thereafter to observe and maintain its prices through threats to discontinue to supply them further and procured promises and assurances from them to do so;
- (d) Refused to supply its products to price cutters pending the giving of satisfactory assurances that they would thereafter observe and maintain said prices; and
- (e) Penalized such customers in some instances through according them less favorable terms or discounts than regularly given to those observing its prices;

With the result that such prices were maintained to a substantial extent, competition in the sale and distribution of its products was lessened and suppressed, customers were prevented from selling the same at such lower prices as they might desire, and purchasers of such products were deprived of the advantage of free competition in the sale thereof:

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

Mr. James T. Clark for the Commission.

Chadwick, McMicken, Ramsey & Rupp of Seattle, Wash., and
Mr. Daniel N. Dougherty of San Francisco, Calif., 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 Washington corporation engaged in the manufacture of certain hair preparations, named by it respectively, "Gold Glint Shampoo" and "Golden Glint Powder," and in the sale thereof to