

IN THE MATTER OF
REUBEN BERMAN, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF SILKTEX HOSIERY
MILLS

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

Docket 1317. Complaint, May 22, 1925—Decision, Jan. 15, 1927

Where an individual engaged in the purchase of hosiery containing about 14 per cent of genuine silk and 86 per cent of "artificial silk" or fibre, from the manufacturers, and in the sale thereof directly to the consuming public through house-to-house canvassers, and neither owning nor operating any mill or factory manufacturing hosiery,

- (a) Employed the words "Silktex Hosiery Mills" as a part of his trade name, and featured said words in his trade literature describing said hosiery, with the capacity and tendency to mislead and deceive the purchasing public into believing him to be a manufacturer selling his said product at prices substantially below prevailing prices for similar hosiery sold in the usual course of trade from manufacturer to jobber to retailer to public, and thereby divert trade from manufacturers who sold their product directly to the public in competition with him, and from dealers who purchased their hosiery from the manufacturers and resold the same to the public under truthful descriptions of the source thereof;
- (b) Used and featured the words "Ladies Silk Hosiery" or "Ladies Silktex Fashioned Silk Hosiery" in connection with the sale and offer of his said hosiery and in the designations applied thereto in his trade literature, and upon the containers thereof, with the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into believing such hosiery to be composed wholly of the silk of the cocoon of the silk worm, and to divert business from and otherwise injure competitors engaged in the sale of hosiery composed entirely of silk, and hosiery composed partly of silk and partly of artificial silk and other materials:

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

Mr. James M. Brinson for the Commission.

Berman & Berman, of Hartford, Conn., 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, an individual engaged in the sale of hosiery direct to the consuming public through house to house canvass by canvassers soliciting business from consumers in various States, and with place of business in New York City, with assuming or using misleading trade name, 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 charged, dealing in a hosiery containing only about 15 per cent silk derived from the cocoon of the silkworm, together with other material simulating the general appearance thereof, and neither owning nor operating any hosiery mill whatever, but purchasing the hosiery sold by him from manufacturers and reselling the same to the consumer at a profit and at prevailing retail prices, for about three years preceding the complaint set forth upon the trade literature supplied to his aforesaid agents the phrases "Silktex Fashioned Hosiery," "Ladies' Silk Hosiery" and his trade name "Silktex Hosiery Mills," and packed his said hosiery in containers with the phrase "Ladies' Silktex Fashioned Silk Hose" thereon.

Such acts and practices had the capacity and tendency, as charged, to cause, and the effect of causing many of the consuming public to purchase said products as and for those composed of silk, and also the capacity and tendency to mislead and deceive and the effect of misleading and deceiving many of the public into believing that in dealing with respondent, the purchaser was buying directly from the manufacturer and thus eliminating the profits of middlemen, and obtaining a saving equivalent thereto, and also had the tendency to and the effect of diverting business from and otherwise prejudicing competitors who, as manufacturers of silk and other hosiery sell their products directly to the consuming public, respectively, rightfully represented the one as silk and in no wise misrepresenting the other, and competitors who purchase the hosiery dealt in by them from the manufacturers and resell the same to retailers and to the consuming public in the ordinary course of trade; 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, the Federal Trade Commission issued and served its complaint upon the respondent, Reuben Berman, doing business under the trade name and style of Silktex Hosiery Mills, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act.

Respondent filed his answer and appeared by attorney. Hearing was had in the course of which testimony and evidence were duly received. Thereafter brief was filed by the attorney for the Commission, and the respondent having failed to file brief, the matter came

on for decision, and the Commission having considered the record and being now advised in the premises makes this its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Reuben Berman, is an individual and is now and for several years last past has been engaged, under the trade name and style of "Silktex Hosiery Mills," in the business of selling hosiery in the various States of the United States. It has been and is the practice of respondent, to offer for sale and sell his hosiery directly to the consuming public through the agency of so-called "house-to-house canvassers." These canvassers representing respondent have solicited and still solicit purchasers for his hosiery in the various States of the United States by the use of cases containing samples of said hosiery, color charts, descriptive leaflets and other trade literature which are displayed to purchasers or prospective purchasers. The literature so employed by respondent in connection with the sale or attempted sale of his hosiery, contains in conspicuous places thereon the phrase "Silktex Fashioned Hosiery," "Ladies' Silk Hosiery," and the trade name of respondent, "Silktex Hosiery Mills." Orders for hosiery received by said solicitors or canvassers so representing respondent, are by them transmitted to respondent at his place of business in the City and State of New York, and thereupon respondent completes the sales of such hosiery by causing it to be transported, in compliance with the orders so transmitted, from his said place of business, to the purchasers thereof at their respective points of location in other States of the United States. Respondent packs his hosiery for shipment in boxes upon which there is set forth the phrase, "Ladies' Silktex Fashioned Silk Hosiery," and said hosiery is delivered to purchasers in such boxes bearing said inscription. Respondent is, and for several years last past has been, in the course and conduct of said business in competition with other individuals, corporations and partnerships engaged in the sale of hosiery in commerce between or among the various States of the United States.

PAR. 2. The word "silk" as applied to hosiery signifies and means and is generally understood by the purchasing public to signify and mean hosiery made from a material derived from the cocoon of the silkworm.

PAR. 3. Respondent now sells, and for several years last past, has sold hosiery containing 14 per cent of silk and 86 per cent of another material known as artificial silk or fiber, which contains no silk but which resembles it in general appearance. It has been and is the practice of respondent and his canvassers and agents to use in connection with offering for sale or selling such hosiery as descriptive

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thereof, the phrases "Ladies' Silk Hosiery" and "Ladies' Silktex Fashioned Silk Hose."

PAR. 4. Respondent does not own or operate a mill or factory and at no time heretofore has owned, operated or had an interest in or connection with any mill or factory in which hosiery of any kind has been or is manufactured. He purchases, and at all times heretofore has purchased from manufacturers the hosiery sold or offered for sale by him in the course and conduct of his business.

PAR. 5. The use by respondent of the phrases "Ladies' Silk Hosiery" and "Ladies' Silktex Fashioned Silk Hose" upon his trade literature and upon the boxes in which his product is shipped and delivered to purchasers, has had and has the capacity and tendency to mislead and deceive a substantial portion of the public into the belief that such hosiery is composed wholly of silk of the cocoon of the silkworm and has had and has the capacity and tendency to divert business from and otherwise injure competitors engaged in the sale, in interstate commerce, of hosiery consisting entirely of silk and of hosiery consisting partly of silk and partly of artificial silk or other material.

PAR. 6. The use by respondent of the trade name "Silktex Hosiery Mills" in connection with his said business, was calculated to mislead and deceive the purchasing public by inducing numerous persons to purchase hosiery from respondent in the erroneous belief that respondent was a manufacturer of hosiery and was selling his product at prices substantially below those at which hosiery of like grade and quality would sell in the usual course of trade, from manufacturer to jobber, to the retailer, to the public, thereby diverting trade from manufacturers of hosiery and other competitors selling their product directly to the public, including dealers purchasing hosiery from the manufacturer and reselling same to the public, through truthful descriptions of the source and qualities thereof.

CONCLUSION

The above and foregoing acts and practices of respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in interstate commerce in 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 re-

spondent, the testimony and evidence and brief of counsel for the Commission, the respondent having failed to file brief or to appear either in person or by counsel for argument at the time designated therefor and the matter having come on regularly for decision and the Commission thereupon having made its report, stating its findings as to the facts, with its conclusion that the respondent, Reuben Berman, doing business under the trade name and style of Silktex Hosiery Mills, 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 respondent Reuben Berman, doing business under the name and style Silktex Hosiery Mills, his agents, representatives, servants, and employees cease and desist from directly or indirectly—

(1) Using the word "Silk" alone or in combination with other words, on brands, labels, boxes, or packages, or in trade names, or trade-marks, or in newspapers, magazines, circulars, booklets, or in any manner whatsoever, in connection with the sale or offering for sale of hosiery, in interstate commerce, (a) unless the material of the hosiery is derived entirely from the cocoon of the silk worm, or (b) unless, where the hosiery is made partly of silk, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

(2) Carrying on the business of selling hosiery in interstate commerce under a name which includes the word "Mills" in combination with the words "Silktex Hosiery," or words of like import, and from making representations through advertisements, circulars, correspondence, stationery, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that respondent is the owner of or controls a hosiery mill or mills, or that the hosiery sold by respondent comes direct from manufacturer to purchaser, unless and until respondent actually owns and operates, or directly and absolutely controls a factory or mill wherein is made any and all hosiery by him sold or offered for sale under such title or name, or by or through any advertisement or other representation of ownership of such a mill or factory.

It is further ordered, That respondent shall file with the Federal Trade Commission a report within 60 days from and after service of this order, setting forth in detail the manner and form of compliance therewith.

Syllabus

IN THE MATTER OF

W. R. MAXWELL, TRADING UNDER THE NAME OF
INTERNATIONAL PUBLISHING COMPANY

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

Docket 1331. Complaint, July 10, 1925—Decision, Jan. 19, 1927

Where a company long published, extensively advertised, and sold throughout the United States an encyclopedia under the name "The New International Encyclopedia," and said publication acquired a good reputation and came to be in considerable demand; and thereafter an individual engaged in the sale, under contract with the owner thereof, of a work theretofore long published and extensively sold throughout the United States under the name "The Teachers' and Pupils' Cyclopedia" and "The New Teachers' and Pupils' Encyclopedia," to be sold, pursuant to said contract, under a different name, and in ten instead of eight volumes, contemporaneously with the sale of the same work under its old name, to a different class of purchasers, and to be sold, with loose-leaf binder, for \$49; and neither owning nor operating any printing establishment, nor collecting any matter for publication in the aforesaid work, nor editing any of the matter published therein, and with no branch offices,

- (a) Published said cyclopedia under the name "International Reference Work," and also falsely represented the same as "The New International Encyclopedia," with the result that many persons were induced to subscribe for such publication as and for said last named work and many persons already possessing "The New Teachers' and Pupils' Cyclopedia" purchased said "International Reference Work" as and for a different publication, the fact being that the two were the same;
- (b) Adopted and used the name "International Publishing Company," with the effect of deceiving many of the purchasing public into believing that they were dealing with a publishing concern, thereby saving a middleman's profit, and obtaining an advantage in the price paid for the publication;
- (c) Falsely represented on the title page of his said work and also upon letterheads and circulars that he maintained branch places of business in many of the principal cities of the United States, such as New York, Chicago, San Francisco, Cleveland, Detroit, Minneapolis, St. Paul, Kansas City, and St. Louis;
- (d) Falsely represented in his advertising matter and through his agents that said work was a new and recent compilation and publication;
- (e) Gave the names of two individuals as "Associate Editors" on the page immediately preceding the preface in said work and on the page following and in advertisements and circulars included under the caption "Partial list of contributors and assistants" the names of 48 persons, together with titles and prominent positions held by them as educators and authors, the fact being that neither of the individuals named as associate editors had