

Complaint

IN THE MATTER OF
CHIPMAN KNITTING MILLS AND CHAS. CHIPMAN'S
SONS CO., INC.

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

Docket 1295. Complaint Mar. 17, 1925—Decision, Apr. 16, 1928

Where a corporation engaged in the manufacture and sale of hosiery, including a woman's stocking, of which only the instep, sole and toe were knit on flat machinery permanently giving the article the desired shape, that is to say, so shaped in the knitting by the process of "narrowing" and "widening," as is "fashioned" hose, and of which the leg, shaped at the ankle by cutting, was made on a regular circular knitting machine, and which, in its seam up the back, mostly imitation, in its "fashion marks" at the back of the calf on each side of the seam, and under the knee, in its opening on the inside of the welt, and in its heel, cut to shape, and with its full fashioned instep, sole, and "diamond point" toe closely simulated a "fashioned" or "full fashioned" stocking, that is, hosiery knit on flat machinery as above set forth; and said corporation's corporate selling agency;

- (a) Advertised, labeled and branded said stockings as "form fashioned"; and
- (b) Supplied advertising material and literature so describing said hosiery to jobbers and retailers;

With the effect of causing confusion in the minds of the trade and purchasing public, and with the capacity and tendency to cause purchasers and prospective purchasers to buy said stockings, so named and labeled, as and for the better shape retaining and ordinarily more expensive genuine "fashioned" or "full fashioned" hosiery made on flat machines as above set forth:

Held, That such false and misleading advertising, and such misbranding or mislabeling, under the circumstances set forth, constituted unfair methods of competition.

Mr. G. Ed. Rowland for the Commission.

Fraleigh & Paul, of Philadelphia, Pa., for respondents.

Greene & Hurd, of New York City, for intervenors, National Association of Hosiery & Underwear Manufacturers.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Chipman Knitting Mills, a Pennsylvania corporation engaged in the manufacture of hosiery and in the sale thereof in wholesale and/or retail quantities throughout various States, and with principal or executive offices and manufacturing plant in Easton, Pa., and respondent Chas. Chipman Sons Co., Inc., a New York

Complaint

12 F. T. C.

corporation with principal or executive offices in New York City, selling agents for said first named corporation's so-called "form fashioned" hosiery, with 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.

Respondents, as charged, engaged as above set forth, for more than one year last past in their advertisements in publications of general circulation throughout the several States, and in other advertising matter, and on the brands and labels attached to hosiery made by them, or the boxes containing the same, falsely represented and described the product in question as "form fashioned" hosiery, the fact being that the same was not "fashioned" as generally understood by the trade and purchasing public, but, instead of being made of a fabric knitted flat and of uniform texture, and shaped by the process known as widening and narrowing, was knitted over a cylinder, and cut out and sewed together with a seam extending the entire length of the boot of the hosiery, in order to simulate genuine fashioned hosiery.¹

As alleged by the complaint "the use by the said respondents of the word 'fashioned', either independently or in conjunction with the word 'form' in denominating and describing their product in their advertising matter and on the brands or labels attached to said product and/or on the boxes containing the same, have the capacity and tendency to and/or do mislead and deceive the purchasers and prospective purchasers of said hosiery into the belief that the said product is 'fashioned' hosiery, and tends to and does cause such purchasers and prospective purchasers to purchase said hosiery in that belief and thereby divert trade from truthfully marked goods" and such misrepresentation unfairly puts to a competitive disadvantage those

¹ The complaint sets forth the foregoing as follows: "The terms 'fashioned' and 'full fashioned', as applied to hosiery are regarded as synonymous by a majority of the trade and purchasing public as descriptive of that type of hosiery made of a fabric knitted flat and of uniform texture and so shaped in the knitting by the process known to the knitting trade as widening and narrowing so as to conform to the shape of the leg, containing said uniformity of texture and being closed in the back with a stitched seam. The shape of the hosiery is accomplished by the dropping of stitches where the contour begins to narrow, thereby forming true gussets or 'fashioned' marks parallel the leg seams. This said process of dropping stitches is carried on also at the bottom of the heel, at the instep, the toe and sometimes just below the garter welt at the back of the knee, giving in all cases permanent shape effected by knitting. The fact is that the hosiery advertised, offered for sale, and sold by respondent as 'form fashioned' is what is known to the trade and purchasing public as 'seamless' hosiery, being hosiery knitted over a cylinder and made to conform to the shape of the leg by means other than the process used in the manufacture of 'fashioned' hosiery. The respondent fashions the hosiery manufactured by it by cutting out the fabric at the back of the ankle and sewing the same together and extending the said seam the entire length of the boot of said hose in order to simulate what is known to the trade and purchasing public as 'fashioned' hosiery knitted by the process hereinbefore stated".

individuals and concerns selling genuine "fashioned" hosiery and denominating and representing the same as such, or as "full fashioned", and dealing fairly among themselves and with the purchasing public; all to the prejudice of the public and respondents' 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 a complaint upon the respondents, Chipman Knitting Mills and Chas. Chipman's Sons Co., Inc., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their appearance and filed their answer to the complaint herein, hearings were had and evidence was introduced upon behalf of the Commission and the respondents before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission and counsel for respondents having submitted briefs and having argued the case before the Commission, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Chipman Knitting Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal executive offices and manufacturing plant located in the city of Easton, in said State. It is now, and has been for more than one year last past, engaged in the business of manufacturing hosiery and in selling the same in interstate commerce in wholesale quantities throughout various States of the United States, and the District of Columbia. On receipt of orders for its said hosiery, respondent causes said product to be shipped or transported in interstate commerce from its warehouses or manufacturing plant located in the State of Pennsylvania to purchasers located in other States of the United States, and the District of Columbia. In the course of its said business respondent has been and still is in competition with other individuals, firms, partnerships and corporations manufacturing hosiery and selling the same in interstate commerce.

Findings

12 F. T. C.

PAR. 2. Respondent, Chas. Chipman's Sons Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal or executive office located in the city of New York, in said State. It is now, and has been for more than one year last past, the selling agent of various hosiery mills, including the mill of respondent, Chipman Knitting Mills, and as selling agent for such mills, sells and ships in interstate commerce from these mills and from its warerooms in the said city of New York various kinds and grades of ladies and misses' hosiery, and various kinds and grades of men's and children's hosiery, and causes the said hosiery, when sold by it, to be transported from the State or States in which manufactured into and through other States of the United States, and the District of Columbia. In the course and conduct of its said business said respondent has been and still is in competition with other individuals, firms, partnerships, and corporations selling hosiery in interstate commerce.

PAR. 3. Respondent, Chipman Knitting Mills, is engaged exclusively in the manufacture of women's seamless, or circular knit, hosiery, and the stocking designated by it as No. 100. It purchases from other mills full fashioned stockings which have been completely knitted and seamed, which it then dyes and finishes. Its output in 1925 was approximately 3,500 dozens pairs per day, consisting of 2,200 dozen pairs of seamless, or circular knit stockings, 1,000 dozen pairs of the No. 100 stocking, and 300 dozen pairs of full fashioned hosiery dyed and finished by it. Respondent, Chas. Chipman's Sons Co., Inc., is engaged principally in the sale of seamless, or circular knit, hosiery. It also sells full fashioned hosiery, but its sales of seamless, or circular knit, stockings in dozen pairs greatly exceeds its sales of full fashioned stockings. It also advertises and sells under the name and label "Form Fashioned", the No. 100 stocking made by respondent, Chipman Knitting Mills.

PAR. 4. Respondent, Chipman Knitting Mills, claims to manufacture the stocking designated by it as No. 100 under three patents, as follows: U. S. Letters Patent No. 924,605 issued June 8, 1909, which expired June 8, 1926; U. S. Letters Patent No. 1,551,993, issued September 1, 1925; and U. S. Letters Patent No. 1,589,290, issued June 15, 1926. None of these patents covers the method of knitting either the leg or the instep, sole and toe of the said stocking, but relate wholly and exclusively to so knitting a heel tab on a circular machine, and cutting the same, that a seamless, circular knit leg tube may be transferred to that part of a flat, full fashioned machine known as a "footer", in order that a full fashioned instep, sole and toe may be joined to the circular knit leg. Said respondent registered the

trade-mark "Form Fashioned" in the U. S. Patent Office on November 1, 1921, registration No. 147,842, and has since used and now uses the same as a trade-mark for its said No. 100 stocking.

PAR. 5. Respondents advertise the No. 100 stockings under the trade-mark label "Form Fashioned", and pack, sell and ship the same under said label to jobbers throughout the United States, and said jobbers resell the said stockings under that label to retail dealers. Respondents also supply and ship to jobbers and to retailers various kinds of advertising material and literature featuring the said trade-mark label. Many jobbers purchasing the said No. 100 stockings from respondents, do not use this trade-mark label "Form Fashioned", and at their request, respondents pack and ship the stockings under the private brand names and labels of such jobbers, or simply tagged as their "No. 100". For one or more jobbers, respondents pack and ship these stockings under the name and label "F. F. F.", said letters standing for "Full Fashioned Foot", and said stockings are sold by these jobbers to retailers under said name and label. Respondents supply to such jobbers and retailers advertising material of various kinds featuring this name.

PAR. 6. Hosiery is generally divided into three principal classes known as "full fashioned" hosiery, "seamless", or "circular knit", hosiery, and "cut" hosiery. The vast majority of stockings for women sold in this country during the past thirty years fall within the first two classes, very few of the last class being manufactured and sold. The machines used and the method of knitting hosiery of the first two classes are distinctly different. Full fashioned hosiery is knitted on flat machines, invented about 1864 by William Cotton, and are known today as "Cotton patent type machines". Such machines knit a flat piece of fabric, which is shaped during the knitting process, and the edges of which have to be seamed together to complete the stocking. Seamless, or circular knit, hosiery is knitted on circular machines, which knit a seamless tube containing the same number of wales at the ankle as at the top of the stocking, and the completed stocking is seamless throughout. Until recently such stockings have been known as "seamless" stockings, but because of developments in the industry, which will be set forth hereinafter, they are now more generally referred to as "circular knit" hosiery. In neither full fashioned nor seamless hosiery is any part of the knitted fabric cut and sewed. Cut hosiery is manufactured either from flat, unshaped pieces of fabric which are cut to pattern and sewed together, or from seamless tubes knitted on the circular knitting machines. The majority of stockings sold in this country prior to the year 1880 were of the cut type. Because of its more

expensive method of manufacture, and its better fit, due to the shaping given it during the knitting process, full fashioned hosiery customarily sells for a higher price than seamless, or circular knit, hosiery.

PAR. 7. The essential characteristic of full fashioned hosiery is that the flat fabric of the stocking is structurally shaped in the knitting to conform to the shape of the human leg and foot. This is accomplished by a process termed "narrowing", which consists in removing loops from two or more needles to an adjoining needle, knitting these loops in one operation of the transferee needle, and thereafter leaving the first needles out of the knitting operation. This results, first, in reducing the number of wales in the fabric, thereby "narrowing" the flat piece of fabric, and secondly, in producing noticeable gussets or prominences in the fabric. Such gussets or prominences have long been known in the trade by the trade term "fashion marks". These "fashion marks" appear in the flat fabric wherever the narrowing process has been employed and are customarily found in full fashioned stockings under the knee, at the back of the leg on each side of the seam, in the heel, under the instep, and at the toe. On machines of the Cotton patent type, it is mechanically possible to "narrow", or shape, the flat piece of fabric in this way at any point. As the foot is considerably narrower and much shorter than the leg, the knitting can be completed in a much shorter period. Cotton patent type machines are therefore divided into two parts, one called the "legger" and the other the "footer". A complete machine or set, usually consists of three "leggers" and one "footer". The legger knits the leg of the stocking, including the heel, and the "footer" knits the instep, sole and toe of the foot. Knitting is begun on the "legger" at what is to be the top of the stocking, forming a flat piece of fabric. As the knitting proceeds, each side of the flat fabric is generally slightly "narrowed" below the welt, with the result that "fashion marks" appear under or back of the knee in the completed stocking. When the widest point of the calf is reached, gradual "narrowing" is begun and continued down to the top of the ankle. At this point in the "narrowing" process, the loops are not transferred from the end needles of the flat needle bed, but from needles five or more inward from each end, so that in the completed stocking a vertical row of "fashion marks" appears on each side of, and four or more wales away from, the seam at the back of the stocking. These intervening wales between the seam and the two parallel rows of "fashion marks" are known in the trade as "bordering wales". At the heel a large number of needles at the center of the needle bed are taken out of action, and two heel tabs are knit,

each of which is slightly "narrowed", leaving "fashion marks" in the heel of the completed stocking. The knitted fabric is then transferred to the "footer" and the instep, sole and toe knitted onto the leg. The "narrowing" process is continued on the footer, and the flat fabric is "narrowed" somewhat on each side to shape the instep. At the toe the "narrowing" is very rapid, loops being transferred inward on each side at every course, forming distinct "narrowing lines", which results in a structural formation in the fabric usually referred to as the "diamond point" toe. The flat piece of fabric is then removed from the "footer", and put on a seaming machine, which seams together the selvedge edges from the toe to the top of the stocking. The complete stocking has a seam extending along the bottom of the foot, through the heel and up the back of the leg to just inside the garter welt. The seaming machine can not reach the inside thickness of the welt, which results in an opening about two inches long being left at that point.

PAR. 8. The distinguishing characteristics of full fashioned stockings are, first, a seam from top to toe; second, the "fashion marks", which appear usually under the knee, and always at the calf of the leg, in two lines parallel to and on each side of the seam, in the heel and under the instep; third, a distinctive box-like structure of the heel; fourth, the "diamond point" toe; and fifth, an opening in the seam at the inside thickness of the garter welt.

PAR. 9. Seamless, or circular knit stockings, are knit on cylindrical machines, which knit one stocking at a time, in continuous succession. They present in appearance none of the characteristics of full fashioned stockings. The knitting is done by a revolving cylinder on which is a circle, or battery, of needles. The knitting begins at the top of the stocking, and continues until the toe is reached, and the stocking comes off the machine and another one is immediately started. The stocking when it is completed is in the form of a tubular web, containing the same number of wales at the ankle and in the foot, as at the top. At the heel and toe of the stocking the machine performs so-called "reciprocal" knitting in the course of which the machine instead of revolving, oscillates back and forth around only a part of the circle of needles. During this reciprocal knitting process certain needles are pushed to an inactive position until only about one-third of them are knitting. As the knitting proceeds these inactive needles are again put in action, the final result being a seamless "pouch" conforming to the shape of the heel and toe. The needles which are temporarily put out of action in this reciprocal knitting operation retain on them their loops, and there being no transfer of loops from one needle to another, as in the case of the full fashioned

Findings

12 F. T. C.

machine, no "fashion marks" appear in the completed seamless stocking. No circular machine has yet been put into commercial use which is capable of transferring loops from one needle to another, thereby reducing the circumference of the seamless tube. The knitted structure of the heel of a seamless, or circular knit, stocking presents an appearance noticeably different from the box-like appearance of a full fashioned stocking. Various improvements have been made to the circular machine designed to give shape to the stocking at the ankle. These consist of mechanical attachments which tighten the tension of the yarn at this point, and knit shorter stitches at the ankle than at the top.

The chief disadvantage of the seamless or circular knit, stockings is that the ankle has the same number of wales as the upper part of the leg, and hence does not conform to the shape of the human leg at that point. Such shaping as is given at the ankle by tightening the tension or knitting shorter stitches is usually temporary, and after use and washing the stockings tend to lose their shape at the ankle and revert to the straight tubular form. The circular machines knit stockings in continuous succession, one at a time, and as the stockings are knitted as a tube, they can be turned out much more rapidly and at less expense than can full fashioned stockings. Skilled operators are not required, as in the case of the Cotton patent type machine, and one operator can take care of a number of machines.

PAR. 10. Up until about 1917 seamless stockings, as the name implies, contained no seams or "fashion marks." When more of the stocking became visible, by reason of the change in length of women's skirts, manufacturers of seamless stockings began knitting an imitation seam in their stockings by means of an attachment to the circular machine. Later, in order to more nearly imitate the appearance of full fashioned stockings these manufacturers also devised means for putting imitation "fashion marks" at the back of the calf of their stockings, in the same place at which they are found in full fashioned stockings where they would be visible when the stockings were worn. At the present time practically all seamless, or circular knit, stockings contain these imitations of full fashioned stockings.

It is not customary to put these imitations at points where they are not visible when the stockings are worn, and accordingly seamless, or circular knit, stockings have no seam along the bottom of the foot, or imitation "fashion marks" under the knee, in the heel, and under the instep. Since an imitation seam now appears at the back of seamless, or circular knit, stockings, the term "seamless" is no longer used to describe them, and they are usually referred to in the industry as "circular knit" hosiery. After imitation "fashion marks" were

added to the imitation seam, some circular knit manufacturers, in advertising and labelling such stockings, began to use the word "fashioned," or a term containing that word, such as "mock fashioned," "semi-fashioned," etc., to describe their stockings. The use of such word, or terms, has created confusion in the minds of the purchasing public as to the true meaning of the word "fashioned," as applied to hosiery.

PAR. 11. Cut hosiery was originally knit in a flat, unshaped piece of fabric, and then cut to the shape of a stocking and sewed together. After the circular knitting machine was perfected, the tubular webbing produced by that machine was utilized as a material for such stockings. The tubular web was cut in lengths, feet cut in it, and sewed on sewing machines. At present very little cut hosiery is manufactured in this country.

PAR. 12. The No. 100 stocking advertised and sold by respondents under the name "Forma Fashioned" is a combination circular knit, full fashioned and cut out stocking. The leg of the stocking is knit on a circular knitting machine, the instep, sole and toe are knit on the "footer" of a Cotton patent type machine, and a certain amount of material is cut out at the ankle to give the stocking shape at that point. The method of manufacture is as follows:

The leg is knit on a regular circular knitting machine, except that the cylinder contains more needles than the ordinary machine, because material is to be cut out of the ankle. As the knitting of the leg proceeds, the stitches are tightened at the ankle. A straight edged, semicircular heel tab is knitted on the bottom of the leg, under a patent owned by respondent, Chipman Knitting Mills, instead of the usual heel pouch as in regular circular knit stockings. This heel has a box-like appearance, and closely resembles a full fashioned heel. When the stocking comes off the circular knitting machine, the heel tab and a part of the ankle portion are split up the middle so it can be transferred to the full fashioned "footer," where the full fashioned instep, sole and toe are knitted on to the leg. The stocking is then transferred to a machine which sews the edges of the foot together, cuts off part of the heel so as to round off the point, cuts out a quantity of the fabric at the ankle and sews together the cut portion. About forty wales are cut out at the bottom of the ankle, the cutting tapering off until the calf is reached, where the cutting stops and the seamless tube is left intact from that point to the top of the stocking. After the cut edges of the heel and ankle are seamed together the machine knits an imitation seam from the point where this necessary seam ends up to the top of the stocking. An opening is cut in the inside thickness of the seamless knit welt, in

the same place as an opening is of necessity left in the welt of full fashioned stockings. Imitation "fashion marks" are put in the stocking on each side of the seam at the back of the calf, as in most circular knit stockings, and also under the knee where they appear in full fashioned stockings. It is unusual for imitation "fashion marks" to appear in seamless, or circular knit stockings at this point.

PAR. 13. The use of the word "fashioned" as applied to hosiery means that the hosiery so described has been shaped in the structure of the knitted fabric by the process known as "narrowing" or "widening" so as to conform to the shape of the human leg. From the beginning of the hosiery industry the word "fashioned" has had a descriptive meaning in the trade. Prior to the invention of power-driven machines in England, stockings were knitted on hand stocking-frames, which had a straight, or flat, bed of needles, and on which was knitted a flat fabric. The operator of such a stocking frame could knit a straight, unshaped, parallel-edged fabric, or he could widen or narrow the fabric at will by stopping at the end of each course and transferring by hand the loop on the end needle outward to a new needle or inward to a needle already having a loop on it. Where widened, a small hole or pinpoint appeared in the fabric; where narrowed, a small gusset or "fashion mark" appeared. Only knitted fabric shaped in this way during the process of knitting has been termed "fashioned work."

In the early books on the hosiery industry, stockings produced by this process are referred to as "fashioned" hosiery, to distinguish them from hosiery produced by cutting to shape. Machines of the Cotton patent type automatically perform the same process of "narrowing" as was done by hand on the stocking frames, and the hosiery thus produced has always been termed "fashioned" hosiery. The term "full fashioned" is generally used in this country in advertising and selling stockings knitted on these machines, but many manufacturers, jobbers, and retailers, refer to such stockings by the single word "fashioned". Prior to the appearance of imitation seams and "fashion marks" on seamless, or circular knit, stockings, the word "fashioned" was not used in any way to describe such stockings, nor was it employed in advertising, labelling or selling them, and since that time there has been no change in the method of knitting such stockings which would entitle them to be described as "fashioned."

PAR. 14. The word "fashioned", as applied to hosiery has been for many years associated in the minds of the purchasing public with full fashioned hosiery, which hosiery is given a shape in the knit-

ting process by the transferring of loops or stitches from one needle to another and the dropping or adding of needles in the knitting operation, and which bears certain distinguishing characteristics in outward appearance by which it can be identified. Hosiery shaped by this process retains its shape after continued wearing and washing. The use of the word "fashioned", either by itself or in conjunction with any other word or words, to describe, or as a label for, hosiery which bears the outward appearance of full fashioned hosiery but which has been shaped by cutting or by changing the stitch length, or tension, at the ankle, has the capacity and tendency to cause purchasers and prospective purchasers to buy said hosiery in the belief that they are buying full fashioned hosiery, or hosiery which has been shaped in the knitting process by the same or similar process to that employed in making full fashioned hosiery.

PAR. 15. The leg and heel of respondent's No. 100 stocking, advertised and sold under the name "form fashioned", is not fashioned as that term is used and understood in the hosiery industry. It is made on a circular knitting machine and the shaping given the stocking at the ankle is not accomplished by the knitting process, but is the result of cutting the fabric after the knitting is completed. The instep, sole and toe of the stocking is knit on a Cotton patent type "footer", and the flat fabric is shaped by "narrowing" in the knitting process, and may properly be described as "fashioned" or "full fashioned". The term "fashioned" as used in the name "form fashioned" applies to the whole stocking, and is not limited to the foot of said stocking. The word "form" has no distinctive meaning in the hosiery industry and does not qualify or limit the word "fashioned" in any material way. The use of the word "fashioned" in the term "form fashioned" to describe the No. 100 stocking manufactured and sold by respondents, without qualifying words which limit its application to the instep, sole and toe of said stocking, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that the entire stocking has been shaped in the knitting in the same way that full fashioned stockings are shaped, and to cause them to purchase such stocking in that belief.

PAR. 16. The term "form fashioned", used by the respondents as a name and label for the No. 100 stocking manufactured and sold by them, is so similar in sound and appearance to the term "full fashioned", a well-known trade term descriptive of stockings possessing certain well-recognized characteristics, as to cause confusion in the minds of the trade and purchasing public, and has the capacity and tendency to cause purchasers and prospective purchasers to buy

said No. 100 stockings, under the name and label "form fashioned", in the belief that they are actually purchasing full fashioned stockings.

PAR. 17. The No. 100 stocking advertised and sold by respondents under the name "form fashioned" closely simulates a full-fashioned stocking. It has a seam up the back, most of which is an imitation seam, the same as a full fashioned stocking; it has imitation "fashion marks" on the back of the calf on each side of the seam, in the same place as they appear on a full fashioned stocking; it also has these imitation fashion marks under the knee, where they do not customarily appear in a circular knit stocking, but where they are to be found in practically all full fashioned stockings; it has an opening on the inside of the welt, which appears in all full fashioned stockings and which is cut there by respondents for the partly admitted purpose of imitating a full fashioned stocking; it has a heel which differs from the ordinary seamless heel and which, although the fabric is knit on a circular machine, resembles so closely the heel of a full fashioned stocking that it requires close examination by one familiar with hosiery to distinguish it; and it has a full fashioned instep and sole, and the "diamond point" toe. The "diamond point" toe is a distinguishing mark of a full fashioned stocking, and many women rely on it when purchasing hosiery to assure themselves that they are getting full fashioned stockings. This stocking as manufactured and sold by respondents is so similar in outward appearance to a full fashioned stocking that its advertisement and sale under the name and label "form fashioned" has the capacity and tendency to mislead and deceive purchasers into the belief that it is a full fashioned stocking and to cause them to buy it in that belief.

PAR. 18. The use by respondents of the word "fashioned" in the name and label "form fashioned", to describe a stocking, the leg and heel of which are made on a circular knitting machine and shaped at the ankle by cutting, without limiting the use of said word to the foot of said stocking, said foot being what is known and recognized as a "full fashioned foot", is misleading to the trade and purchasing public, and has the capacity and tendency to induce purchasers and prospective purchasers to buy said stocking in the belief that they are purchasing a stocking which has been shaped in the knitting by the process known as "narrowing", hereinbefore described, when such is not the case.

PAR. 19. The use by respondents of the name and label "form fashioned" to describe the No. 100 stocking manufactured and sold by them, which said stocking in its outward appearance closely simu-

lates a full fashioned stocking, causes confusion in the minds of the trade and purchasing public, and has the tendency and capacity to mislead and deceive purchasers and prospective purchasers of said stocking, sold under the name and label above set forth, into the belief that they are purchasing a full fashioned stocking, when such is not the case.

CONCLUSION

The practices of said respondents, Chipman Knitting Mills and Chas. Chipman's Sons Co., Inc., 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, answer of the respondents, the testimony and the evidence, and the Commission having made its findings as to the facts and its conclusion that the respondents have 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",

Now, therefore, it is ordered, That the respondents, Chipman Knitting Mills, a corporation, and Chas. Chipman's Sons Co., Inc., a corporation, their officers, directors, agents, servants, and employees, do cease and desist from directly or indirectly:

1. Using the word "fashioned", either by itself or in conjunction with any other word or words, as a name for or to describe a stocking, unless said stocking is shaped in the knitting by the process known as "narrowing" or "widening", which involves the transfer of loops or stitches from one needle to another and the dropping or adding of needles in the knitting operation.

2. Using the word "fashioned", either by itself or in conjunction with any other word or words, as a name for, or to describe, a stocking only part of which is actually shaped in the knitting by the process known as "narrowing" or "widening", which involves the transfer of loops or stitches from one needle to another and the dropping or adding of needles in the knitting operation, unless said word

"fashioned" is qualified or limited in such a way as to apply specifically to the part of the stocking thus shaped.

3. Using the word "fashioned", either by itself or in conjunction with the word "form", as a name for, or in advertising, labelling and selling, a stocking the leg and heel of which is knitted on a circular knitting machine, with the ankle shaped by cutting out a portion of the material, and the instep, sole and toe shaped in the knitting on a Cotton patent type "footer" machine, by the process known as "narrowing", unless said word "fashioned" is qualified or limited in such a way that it applies specifically to the foot of said stocking.

4. Using the term "form fashioned" as a name and/or label for a stocking which closely simulates in outward appearance and characteristics a full fashioned stocking, but which in fact is not a full fashioned stocking.

5. Using the term "form fashioned" as a name and/or label for a stocking which closely simulates a full fashioned stocking in that it has a full fashioned foot, a seam up the back, most of which is imitation, imitation "fashion marks" at the back of the calf on each side of the seam, and under the knee, and a heel knitted on a circular knitting machine and cut to shape, which heel closely resembles a full fashioned heel.

It is further ordered, That the respondents, Chipman Knitting Mills and Chas. Chipman's Sons Co., Inc., shall within 60 days after 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.

Complaint

IN THE MATTER OF

CHARLES T. MORRISSEY, DOING BUSINESS UNDER THE
TRADE NAMES AND STYLES OF CHARLES T. MORRISSEY & CO., AND CHARLES ORANGEADE COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5, OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1444. Complaint, Mar. 10, 1927—Decision, May 14, 1928*

Where an individual, engaged under a trade name including the word "Orangeade", in the manufacture and sale of "soft drink powders", for use, together with certain liquid flavors, in the preparation of beverages, and not composed, in either case, of fruits or fruit juices, but principally of tartaric acid as a base, with oil of limes, lemons or oranges, in the "lime" etc., flavors, and artificially colored;

- (a) Labeled the packages, vials and other containers of said soft drink powders and flavors, "cherry", "strawberry", "grape", "raspberry", "raspberry", "pineapple", "lime", "lemon", "orange", "orangeade", "orange-julep", "grape-julep", "cherry-julep", and "lemonette"; and
- (b) Advertised said powders and flavors under such names, in publications of general circulation and by means of circulars and cards distributed to dealers and others, together with such representations as, "The best strawberry drink you ever tasted" and "Wonderful true fruit flavor orangeade in powder", and depictions of the respective fruits indicated;

With the capacity and tendency to mislead and deceive the public into believing said products to be derived from the fruits or the juices of fruits indicated, and to induce the purchase thereof in such belief, and with the effect of so doing, and of placing in the hands of distributors and dispensers of said soft drink powders and beverages made therefrom, the means, in the advertising matter and display cards supplied by him to distributors and dispensers of his aforesaid products, and the beverages made therefrom, of deceiving and defrauding the consuming public, and with the capacity and tendency to divert business from and otherwise injure and prejudice competitors dealing in pure fruit juices or extracts for compounding beverages, and in beverages already compounded, and who truthfully mark their products:

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

Mr. William A. Sweet for the Commisison.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, doing business under a trade name including the word "Orangeade", engaged in the manufacture of soft drink powders and in the sale thereof to purchasers in various