

Syllabus

IN THE MATTER OF

SIMON B. BLUESTINE AND SAMUEL L. BLUESTINE,
PARTNERS, DOING BUSINESS UNDER THE TRADE
NAMES AND STYLES NUSTILE HOSIERY MILLS, AND
NUSTILE HOSIERY 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 1351. Complaint, Oct. 22, 1925—Decision, June 30, 1928

Where a firm engaged in the sale of hosiery through salesmen to the consuming public in the different States, and neither owning nor operating any hosiery factory or mills, but purchasing the hosiery dealt in by them from others and reselling the same to the public in due course of commerce among the States,

- (a) Set forth their trade name Nustile Hosiery Mills in their advertisements in trade publications of general circulation, soliciting persons to sell their hosiery by house-to-house canvass, and represented themselves to customers and prospective customers, in circulars, circular letters, pamphlets and other advertising matter, as hosiery manufacturers, enabling the public by reason of their alleged direct sales from manufacturer to consumer to purchase better hosiery for less money, directing their salesmen so to represent them to customers and prospective customers, using their aforesaid trade name in such circulars, letters, and pamphlets, and setting forth therein pictorial representations of a five-story mill or factory with their aforesaid trade name across the front thereof, and of various rooms labeled to represent rooms of their purported factory, and making statements relative to the alleged advantages resulting in quality, value, delivery, uniformity, and satisfaction of customers, through their pretended direct selling, and through their alleged business policies, such as "we have merited an institution which has no counterpart in catering to the direct selling hosiery field"; and
- (b) Represented hosiery dealt in by them, through pamphlets and other advertising matter, as "Silk", "Pure Thread Silk" and "Japanese Silk", the fact being that the tops thereof were cotton and the legs contained but 13.1 per cent silk, with the balance rayon;

With the capacity and tendency to mislead and deceive the purchasing public respectively into buying the hosiery last above described as hosiery composed entirely of silk, and into purchasing hosiery from them as from the manufacturers thereof, selling their product directly to the users at prices substantially below those prevailing for a comparable product sold in the usual course of trade from manufacturer to jobber to retailer to public, to the injury of manufacturers selling directly to the public and of dealers purchasing from the manufacturer and reselling to the public:

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

Mr. W. T. Chantland for the Commission.

Mr. Reuben Levi, of Philadelphia, Pa., for respondents.

Complaint

12 F. T. C.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent Simon L. Bluestine and respondent Samuel L. Bluestine, partners engaged in the sale of hosiery direct to the members of the consuming public residing at points in various States, and doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., with place of business in Philadelphia, with using misleading trade name, misrepresenting business status and product and advertising falsely or misleadingly in regard thereto, 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, for about two years last past, engaged in the sale of their hosiery, as above set forth, through salesmen who solicit and secure orders through display of samples and through arguments and statements as made and suggested to such salesmen by respondents through leaflets, pamphlets, other trade literature and letters instructing and advising said salesmen as to the performance of their duties, and who display to customers and prospective customers sample cases and trade literature furnished to said salesmen by respondent, and corresponding with their customers in regard to complaints by customers, adjustment thereof and other matters, in their aforesaid advertisements and trade literature, and upon their sample cases, letterheads, billheads, and other business stationery set forth their said trade names, Nustile Hosiery Mills and Nustile Hosiery Co., together with a pictorial representation of a large building bearing the sign Nustile Hosiery Mills, and in their said trade literature, advertisements, and correspondence with agents and customers make many false and misleading statements and representations to the effect that they manufacture the hosiery dealt in by them and supply the same to the consuming public to the elimination of middlemen and at a corresponding saving and advantage in price to the purchaser, when in fact they neither own nor operate any mill or mills, but purchase their said hosiery from manufacturers thereof, and resell the same at a profit to them, the respondents, over and above the cost to them.

Said false and misleading statements and representations, as alleged, "have the capacity and tendency to and do (1) cause many of respondents' said salesmen to believe said statements and representations and to represent to customers and prospective customers that respondents manufacture the hosiery which they sell, and that respondents supply same to the consuming public to the elimination of middlemen and at a corresponding saving and advantage in price

to the purchaser", and (2) cause many of the consuming public to purchase respondents' said hosiery in reliance upon said assertions and representations of them and their salesmen.

Respondents further, as charged, in their aforesaid circulars, price lists, leaflets, and other trade literature set forth false and misleading assertions and representations to the effect that (1) their said hosiery is "fashioned" or "full fashioned", when in fact said hosiery, with a mock seam extending the entire length of the boot so as to simulate genuine "fashioned" or "full fashioned" hosiery, is knitted over a cylinder, and made to conform to the shape of the leg by means other than those employed in the manufacture of genuine fashioned or full fashioned hosiery;¹ (2) hosiery composed of a mixture of wool, cotton and a fibre resembling silk in appearance is composed of wool and silk; and (3) hosiery containing about 14 per cent of silk mixed with about 85 per cent of such a fibre as above described, is composed of silk.

The use by respondents, as alleged, of the words "fashioned" or "full fashioned" as above set forth, and their aforesaid false and misleading statements and representations as to the composition of their said hosiery have the tendency and capacity to and do mislead and deceive their said salesmen, customers and prospective customers into believing such hosiery to be genuine "fashioned" or "full fashioned" hosiery, and composed wholly of wool and silk, or of silk, as the case may be, and said salesmen to so represent, offer and sell said hosiery, and customers and prospective customers and many of the consuming public to purchase such hosiery as made and composed as above represented, and to divert business from and otherwise injure and prejudice competitors, many of whom sell the genuine full fashioned or fashioned hosiery, hosiery composed wholly of a mixture of wool and silk, and hosiery composed wholly of silk, and who properly and rightfully represent the same as full fashioned or fashioned and properly represent the composition thereof to the trade and consuming public.

The above alleged acts and practices of respondents are, as charged, all to the prejudice of the public and respondents' competitors and

¹ The complaint, referring to the meaning of the terms "fashioned" and "full fashioned", alleges that these terms "are understood by a majority of the trade and purchasing public as meaning and referring to that type of hosiery made of a fabric knit flat and of uniform texture, and permanently 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, retaining said uniformity of texture and being closed in the back with a stitched seam. Said shape is accomplished by the dropping of stitches at sundry points along or near said seam at the bottom of the heel and instep and at the toe, thereby forming true gussets or fashion marks".

Findings

12 F. T. C.

constitute unfair methods in competition and commerce within the intent and meaning of section 5.

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 Simon B. Bluestine and Samuel L. Bluestine, partners, doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., charging them with unfair methods of competition in commerce in violation of the provisions of section 5 of said act. Respondents filed their answer. Hearing was had in the course of which testimony and evidence was received. Brief was filed by the attorney for the Commission, and thereupon this proceeding 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:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, prior to the issuance of the complaint herein, on October 22, 1925, were partners doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co. with their principal place of business in the city of Philadelphia, in the State of Pennsylvania, engaged in the sale of hosiery direct to the consuming public. In the course and conduct of said business respondents sold hosiery direct to their salesmen, such salesmen delivering the hosiery to consumers and collecting therefor; under the other method, their salesmen took orders from consumers, the respondents forwarding the hosiery to such consumers C. O. D. Under both of said sales methods, respondents were engaged in the sale of hosiery direct to members of the consuming public residing at points in various States of the United States, and caused such hosiery when so sold by them to be transported to the purchasers thereof from Philadelphia, Pa., through and into other States of the United States and carried on such business in direct, active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. In the course and conduct of said business as aforementioned, respondents employed salesmen to solicit orders from the consuming public by house-to-house canvass, which salesmen respondents solicited and secured by means of advertisements, which said advertisements respondents caused to be inserted in various trade

publications of general circulation throughout the United States. In all of said advertisements respondents caused to be set forth their said trade name "Nustile Hosiery Mills".

PAR. 3. In the course and conduct of said business as aforementioned, respondents through circulars, circular letters, pamphlets, and other advertising matter represented, and directed their salesmen to represent, to customers and prospective customers that respondents were manufacturers of hosiery and by reason of the direct sales by them from manufacturer to consumer the public was thereby enabled to purchase better quality hosiery for less money. In said circulars, circular letters, and pamphlets and in advertising matter furnished salesmen respondents styled themselves "Nustile Hosiery Mills" and made use of the following language and representations:

(a) A pictorial representation of a five-story mill or factory with the words "Nustile Hosiery Mills" across the front of such building;

(b) Pictorial representations of various rooms labeled to represent rooms of their purported mill or factory;

(c) Our product.—When a sales representative deals direct with the mills, he has four distinct advantages over his competitors: (1) better quality for the money; (2) better and quicker deliveries; (3) merchandise runs uniform; (4) less complaints from his customers;

(d) We meet all competition in price as well as quality, but even the cheapest pair of stockings from our mill is better value than that sold by other hosiery mills; keyed to a lower pitch in the sale of quality;

(e) By keeping faith with our organization, by concentrating always on quality, by maintaining an honest relation between value and price, we have merited an institution which has no counterpart in catering to the direct selling hosiery field.

PAR. 4. Neither the respondents Simon B. Bluestine and Samuel L. Bluestine, partners, doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., nor said respondent individually owned or operated any factory or mills in which hosiery was manufactured, at the time of the taking of the testimony herein on March 6, 1928, or prior thereto, but the hosiery offered for sale and sold by them was purchased from others and then resold by respondents to the public in due course of commerce among the several States of the United States.

PAR. 5. The use by the respondents Simon B. Bluestine and Samuel L. Bluestine of the word "Mills" in their trade name under which

they carried on business, under the circumstances set out in the findings herein, was calculated to mislead and deceive the purchasing public by inducing numerous persons to purchase hosiery from respondents upon the erroneous belief that respondents were manufacturers of hosiery and were selling their product direct to the users, and at prices substantially below those at which hosiery of like grade and quality were selling in the usual course of trade from manufacturer to jobber, to retailer, to the public; that such practices had the capacity and tendency to injure manufacturers of hosiery who did in fact sell their product direct to the public, as well as dealers who purchase hosiery from the manufacturer and resell same to the public.

PAR. 6. In the course and conduct of said business as aforementioned respondents through pamphlets and other advertising matter directed their salesmen to represent to customers and prospective customers that certain hosiery which respondents sold and offered for sale was "silk", "pure thread silk" and "Japanese silkworm silk", whereas in fact the tops of said hosiery were composed of cotton and the leg contained but 13.1 per cent silk, and 66.9 per cent rayon.

PAR. 7. The term "silk" or "pure thread silk" as applied to hosiery is commonly understood both by the trade and the purchasing public to mean hosiery composed entirely of silk. The use of the terms "silk", "pure thread silk", and "Japanese silkworm silk" by respondents, to describe hosiery made with top of cotton and the leg composed of silk and rayon, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers and lead them to believe that the hosiery so described is composed entirely of silk and to cause them to purchase said hosiery in such belief.

CONCLUSION

The practices of respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and respondents' competitors 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 Commission upon complaint of the Commission, answer of the respondents, testimony and

evidence, and the Commission having made its findings as to the facts and its conclusion that respondents have 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 respondents Simon B. Bluestine and Samuel L. Bluestine, partners, doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., their agents, representatives, servants, and employees do cease and desist from:

(1) Carrying on the business of selling hosiery in commerce among the several States of the United States under a trade name or any other name which includes the word "Mills" in combination with the words "Nustile Hosiery" or words of like import, and from making representations through advertisements, circulars, pamphlets, or in any manner whatsoever, designed to promote or otherwise affect interstate commerce, that they are the owners of or control a hosiery mill or mills or that the hosiery by them sold comes direct from manufacturer to purchaser, unless and until the respondents actually own and operate or directly and absolutely control a factory or mill wherein is made all hosiery by them sold or offered for sale under such title or name.

(2) Using the words "silk", "pure thread silk", or "Japanese silkworm silk", in advertisements or other printed matter or through salesmen or otherwise to represent, describe, or designate hosiery which respondents sell or offer for sale in commerce among the several States of the United States (a) unless such hosiery is composed entirely of silk derived from the cocoon of the silkworm, or (b) unless, where the hosiery is made partly of silk, the word "silk" is accompanied by a word or words aptly and truthfully describing the other material or materials of which such hosiery is in part composed.

It is further ordered, That respondents, Simon B. Bluestine and Samuel L. Bluestine, partners, doing business under the trade names and styles Nustile Hosiery Mills and Nustile Hosiery Co., shall within 60 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.

IN THE MATTER OF

SAMUEL BOOTH

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

Docket 1483. Complaint, Oct. 15, 1927—Decision, June 30, 1928

Where an individual engaged in the sale of bedspreads containing no silk, at prices substantially in excess of prevailing prices for comparable articles, and knitted goods containing not more than 35 per cent wool, and neither owning, controlling, operating nor interested in any mill or factory;

- (a) Designated said bedspreads as the "Famous Diana Silk Spread", "Diana Rayon Silk Spread", "Our Beautiful Silk Spread", and "Genuine Diana Silk Spread" and represented the same as silk, in his advertisements thereof and through agents, and as sold at wholesale prices;
- (b) Represented certain patterns of his said knitted goods as consisting of 100 per cent pure worsted, or 100 per cent pure wool worsted, or silk interwoven into pure worsted; and
- (c) Used a trade name including the words "knitting mills" in the sale of the aforesaid knitted goods, and represented said supposed mills as the largest knitting mills in the world selling knitted outer wear direct to the wearer;

With the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into purchasing the aforesaid products in reliance upon the truth of such representations as to the composition and prices thereof, and into believing that in purchasing said knitted wear from him, the purchasers acquired the same direct from the manufacturer, enabling them to retain or save an amount equivalent to profits ordinarily derived by the middlemen, and thereby divert trade to himself from competitors who truthfully described their products or represented the prices thereof;

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

Mr. James M. Brinson 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 individual, engaged at Chicago under the name Household Supply Co., in the advertisement and sale of bedspreads, and, under the name Crawford Knitting Mills, of knitted goods, with misrepresenting product and advertising 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.