

Complaint

IN THE MATTER OF

GIBBONS KNITTING CO., FORMERLY GIBBONS
KNITTING MILLS, 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 1434. Complaint, Dec. 10, 1926—Decision, Dec. 23, 1929

Where a corporation engaged in the sale of knitted garments at wholesale to retailers thereof in various States, and neither owning nor operating any knitting mill or factory manufacturing the garments dealt in by it, which it purchased from manufacturers thereof,

Featured successive corporate names, respectively including the words "knitting mills" and "knitting," on all garment labels, business stationery, literature, circulars, and other advertisements, including those in trade and other magazines circulating among the retail trade in the middle western and southwestern States:

With the capacity and tendency to mislead and deceive purchasers and prospective purchasers into believing it to be the manufacturer of the products sold them by it and the owner and operator of a knitting mill or manufacturing establishment making the same selling and distributing its said products directly from the manufacturer to the retailer and eliminating charges and profits of all middlemen, at a corresponding advantage and saving in price to said dealers, and to unfairly divert trade from competitors, and with the effect of so misleading and deceiving purchasers and prospective purchasers and of so diverting trade:

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

Mr. Everett F. Haycraft for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a Missouri corporation engaged in the sale of knitted garments at wholesale to retailers in various States and with principal office and place of business in St. Louis, with using misleading corporate name and advertising falsely or misleadingly as to business status, 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, engaged, as above set forth, and neither owning, controlling, nor operating any mills, nor manufacturing the garments dealt in by it, but purchasing said garments from manufacturers thereof and reselling the same at a profit over and above their cost to it, for about five years last past has featured its afore-

Findings

13 F. T. C.

said corporate name in its advertisements in trade publications of general circulation among the clothing, garment, and allied trades, and upon its letterheads, billheads, invoices, price lists, catalogues, and other trade stationery and literature.

Said acts and practices, as alleged, have the capacity and tendency to mislead and deceive, and the effect of misleading and deceiving many of its said retail dealer vendees into the belief that it owns, controls, and operates a mill or mills making the garments dealt in by it, and that persons dealing with it are purchasing such garments directly from the manufacturer thereof and eliminating thereby the profits of middlemen, and to cause many of such dealers to purchase such garments in that belief, and the further effect of diverting business from and otherwise injuring and prejudicing competitors, many of whom manufacture the garments sold by them and rightfully represent themselves as manufacturers thereof, and others of whom purchase such garments and resell the same to other dealers at a profit over and above the cost to them and without in anywise representing themselves as manufacturers thereof; all to the prejudice of the public and of its 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 respondent then known as Gibbons Knitting Mills, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of the said act.

Respondent having entered its appearance and filed its answer to said complaint, hearings were had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint but none in opposition thereto, although opportunity to present the same was given respondent at the hearings. At the close of the last hearing held on May 28, 1929, respondent, having changed its corporate name to Gibbons Knitting Co., declined to submit testimony and indicated its willingness to comply with any order the Commission might issue in the case. Thereafter this proceeding came on regularly for decision, and the Commission having duly considered the record and being now fully advised in the premises makes this its report stating its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Gibbons Knitting Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its office and place of business located in the city of St. Louis in said State. Said respondent was organized January 12, 1922, under the name of Gibbons Knitting Mills, Inc., and operated and conducted the business as hereinafter described until May 31, 1927, when its corporate name was duly changed to Gibbons Knitting Co. For a period of more than one year prior to February 10, 1927, the date the said complaint was issued, and since that date, the respondent was and now is engaged in the sale of knitted garments at wholesale to retailers of the same located in various States of the United States, transporting said products when sold from the State of Missouri to and through various other States of the United States to the purchasers thereof. In the course and conduct of its said business, said respondent did not, and does not now, own nor operate any knitting mill or factory where garments are knitted or manufactured, but always purchased, and now purchases supplies of knitted garments, in which it deals, from thirty or forty different manufacturers located in various States of the United States, and transports said garments to its warehouse or storeroom located in the city of St. Louis in the State of Missouri, where said articles are displayed for sale and from which deliveries are made. In some instances the knitted garments sold by the respondent are shipped to purchasers from this warehouse or storeroom in the city of St. Louis and in other instances from the respective factory from which respondent purchases the garments. Said respondent employs from seven to eight traveling salesmen, who call upon the retail trade regularly and its total volume of business amounts to approximately \$500,000 annually. In the course and conduct of its said business said respondent was at all times herein mentioned in competition with other corporations, individuals, firms and partnerships engaged in the sale and transportation of knitted garments in interstate commerce.

PAR. 2. Said respondent in the course and conduct of its business, as described in paragraph 1 hereof, has prominently displayed its corporate name Gibbons Knitting Mills, Inc., and since May 31, 1927, its present corporate name Gibbons Knitting Co. on all its labels on garments sold by it, its business stationery, literature, circulars, and other advertisements which it circulates amongst the outer garment knitting trade and other allied trades in connection with the sale of said knitted garments. Also in advertisements inserted in trade and other magazines having circulation among the retail trade in the

Order

13 F. T. C.

middle western and southwestern States including particularly the "Drygoodsman & Southwestern Merchants Economist," a trade magazine, published in the city of St. Louis, in the State of Missouri, said respondent has prominently featured its said corporate name.

PAR. 3. The use by respondent of its corporate names containing the words "knitting" and "mills," under the circumstances described in paragraph 2 hereof, has had the capacity and tendency to and did mislead and deceive purchasers and prospective purchasers of the garments sold by said respondent into the erroneous belief—

(a) That respondent is the manufacturer of said products and is the owner and operator of a knitting mill or manufacturing establishment in which said garments are manufactured;

(b) That in selling and distributing said garments from itself to retail dealers respondent is thereby selling and distributing same direct from manufacturer to retail dealer and eliminating the charges and profits of all middlemen with a corresponding advantage and saving in the price to said dealers.

CONCLUSION

By reason of the aforesaid acts and practices of the respondent, as hereinabove set forth, it is concluded by the Commission that the acts and practices of said respondent have the tendency to and the effect of unfairly diverting trade from respondent's competitors and are to the prejudice and injury of the public and that such acts 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 the respondent thereto, the testimony, evidence, and briefs of counsel for the Commission and the consent of respondent that the Commission may make, enter, and serve upon it an order to cease and desist from the violation of the law as alleged in the complaint in this matter; and the Commission having made its findings as to the facts and its conclusion that respondent has been and is now using unfair methods of competition in commerce in violation of the provisions of section 5 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, Gibbons Knitting Co., formerly Gibbons Knitting Mills, Inc., its officers, directors, agents, representatives, servants, and employees cease and desist from using the words "knitting," "mill" or "mills" or words of like import in or as a corporate name or trade name for carrying on the business of selling and distributing knitted or woven products in interstate commerce unless and until the respondent actually owns or directly controls or operates a mill or mills in which said garments are manufactured or produced.

It is further ordered, That respondent Gibbons Knitting Co., formerly Gibbons Knitting Mills, Inc., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
THE AMERICAN SCHOOL OF HOME ECONOMICS

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 1557. Complaint, Feb. 5, 1929—Decision, Jan. 25, 1930

Where a corporation organized under the not for profit laws, and engaged in giving courses of instruction in home economics and related subjects, by correspondence; in its advertisements in magazines and periodicals of general circulation throughout the United States and in advertising matter and letters to prospective pupils,

- (a) Represented that it was an institution organized and incorporated to operate without profit, the facts being that while it had secured no profits for distribution as such, salaries of its "director" and its secretary depended upon its success in securing pupils and remuneration therefrom for tuition, textbooks and supplies, said director was and had been its practical owner, with full control over its business, policies and textbooks sold, and with royalty rights therein, and its said business was his business venture for profit in the same way that correspondence schools incorporated under the for profit laws are business ventures;
- (b) Represented that it maintained a large staff of competent and well-known instructors and teachers who taught and supervised its courses and work of pupils therein, the facts being that only five or six were actually so engaged, and, mostly, on a part-time basis only, and that some of the more than 20 educators in the home-economics field listed by it as "officers of instruction" or supervisors, and authors, and identified by their educational connections, never gave instruction other than by the authorship of a textbook used in the courses, and others had long ceased through death or otherwise, to give actual instruction other than such authorship;
- (c) Represented that through special classes, club rates, subscriptions, and otherwise and for a limited time only it offered and sold its courses at prices substantially lower than the regular prices usually and habitually commanded and secured by it therefor, the fact being that its pretended reduced prices were those at which it regularly sold its courses unconditionally and substantially to all persons alike;
- (d) Represented that it gave free of charge to pupils textbooks and outfits of tools, appliances, and materials for use in study and pursuing its courses, the fact being that the price of said textbooks, etc., was included in the price demanded and received by it for its said courses;
- (e) Represented that pupils taking and completing certain of its courses in cooking and catering would thereby be qualified and enabled to obtain employment at high and lucrative figures or to engage in catering at great profits, the facts being that the profits made or salaries secured by such persons were seldom if ever, comparable to the figures of \$5,000, \$10,000, or \$12,000 mentioned;