

IN THE MATTER OF
KNIT-FIRM, INCORPORATED

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

Docket 1592. Complaint, Apr. 10, 1929—Decision, Apr. 12, 1930

Where a corporation engaged in the sale to retailers of infants' and children's knitted outerwear, made for it under contract, with its material, by individuals, and by knitting mills to which it furnished machines, and made from material at times purchased by it from or through importers, along with finished articles; in its advertisements in trade publications.

- (a) Falsely represented itself as a manufacturer, the fact being that it neither operated nor controlled any mill or factories where said products were made under its supervision and direction or by workmen employed by it or subject to its control or direction; and
- (b) Falsely represented itself as an importer of said knitted outerwear, the fact being that none of the material was directly imported by it from foreign countries;

With the capacity and tendency to mislead and deceive purchasers into believing that said outerwear was manufactured in a mill or mills operated or controlled by it, or was by it directly imported from one or more foreign countries, and into purchasing the same in reliance on such erroneous beliefs:

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

Mr. James M. Brinson for the Commission.

Mr. Robert L. Turk, of New York City, 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 sale of domestic knitted outerwear for infants and children, to purchasers in the various States, and with office and principal place of business in New York City, with misrepresenting business status or advertising falsely or misleadingly in regard thereto, in violation of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce, in that respondent, engaged, as above set forth, and neither owning, controlling, nor operating any mills for the manufacture of the products dealt in by it, has represented by advertisements and otherwise, that it manufactures or imports the same, with the capacity and tendency to mislead and deceive the public, including retailers and consumers, into believing that in

purchasing from respondent, they are purchasing direct from the manufacturer, or that the commodities involved have been manufactured in a foreign country and imported by respondent into the United States, and to divert business from and otherwise injure competitors manufacturing or importing products and selling the same directly to retailers or consumers or both, and wholesalers and jobbers selling as such, domestic or imported commodities, to the prejudice of the public and said 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 entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission duly issued and served a complaint upon Knit-Firm, Inc., a corporation hereinafter called respondent, charging that it has been for several years last past and is violating the provisions of said act of Congress. Thereupon respondent entered its appearance and filed its answer to the complaint, and formal hearings were had thereon before an examiner of the Commission theretofore duly appointed, and testimony and evidence were offered and received and duly recorded and filed in the office of the Commission; thereafter the proceeding came on for final hearing on the record, briefs and oral arguments, and the Commission having duly considered the same, now makes this its report in writing stating its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Knit-Firm, Inc., is now, and since January, 1922, has been, a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of New York in the State aforesaid. It has been, during said period, and now is, offering for sale and selling in commerce among or between the various States of the United States, to retail dealers, for resale, to the consuming public, knitted outerwear for infants and children 1 to 6 years of age, in competition with individuals, partnerships, and corporations offering for sale or selling such or similar commodities in like commerce.

PAR. 2. In the course and conduct of such business, and as inducement for the purchase of its said products, respondent has offered for sale and sold them, in commerce, in the various States of the United States by and through advertisements in publications circulated in

Findings

13 F. T. C.

the trade to which it sells, in which respondent has falsely represented itself as manufacturer and importer of such knitted outerwear for infants and children.

PAR. 3. The word "manufacturer" signifies and means, and is understood to signify and mean, in the knitted goods industry and trade, including dealers, an individual, partnership, or corporation operating or controlling the mill, factory or other establishment in which are manufactured knitted goods offered for sale as products of such manufacturer, and among dealers in such commodities there is a preference for products so manufactured.

PAR. 4. It has been and is the practice of respondent to cause its products to be manufactured for it by various individuals under contracts, in pursuance of which respondent has furnished and furnishes the necessary material for the manufacture of such products. It has been and is its practice, under such contracts, for respondent to pay a specified price per dozen to such manufacturers of its products. Respondent causes about 25 per cent of them to be manufactured by approximately 1,200 individuals in their own homes, and between 40 per cent and 50 per cent to be manufactured by the Bee Emm Knitting Mills of Brooklyn in the State of New York, to which respondent furnishes machines as well as material for the manufacture of its products.

None of respondent's products has at any time been manufactured in a mill or mills, factory or factories, or other place operated, conducted, or controlled by the respondent or under its supervision and direction, or by workmen employed by it, or subject to its control or direction.

PAR. 5. Respondent, Knit-Firm, Inc., has, at various times, purchased from, or through importers, materials for the manufacture of its products, and occasionally finished articles, but it has at no time directly imported from foreign countries into the United States any of the knitted outerwear for infants and children offered for sale or sold by it, or the material or any of it, used in the manufacture of such products.

PAR. 6. The representation of respondent by, or through its advertisements, that is the manufacturer and importer of knitted outerwear for infants and children offered for sale by it, has had, and has, the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief, either that such outerwear for infants and children so offered for sale by it has been, or is, manufactured in a mill or in mills operated or controlled by respondent, or that it has been, or is, directly imported by respondent from one or

302

Order

more foreign countries into the United States, and into the purchase of such outerwear for infants and children in reliance on such erroneous belief.

CONCLUSION

The practices and methods of respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony and evidence submitted, and briefs and argument of counsel, and the Commission having made its report stating its findings as to the facts with 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 Knit-Firm, Inc., its officers, agents, and employees, cease and desist directly or indirectly:

(1) From representing by advertisement or otherwise that it is the manufacturer of knitted outerwear for infants and children in connection with offering for sale or selling it in interstate commerce, unless that advertised or offered as such has been, or is, manufactured in a mill, or in mills operated or controlled by respondent.

(2) From representing by advertisements, or otherwise, that it is the importer of outerwear for infants and children in connection with offering for sale or selling it in interstate commerce, unless that advertised or offered as such has been, or is, directly imported by respondent from one or more foreign countries into the United States.

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

IN THE MATTER OF
V. VIVAUDOU, INCORPORATED

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1464. Complaint, May 27, 1927—Decision Apr. 28, 1930

Where a corporation engaged in the manufacture and sale of perfumes, talcum powders, toilet waters, face powders, cosmetics, and other toilet articles, with factories in New York City, Paris, and Canada, and with principal office and place of business in New York, and branch offices in Chicago and Los Angeles; selling throughout the United States to the retail and jobbing trade, department stores, and syndicate stores, under extensively advertised and known trade names, complete lines of toilet articles made in its aforesaid New York factory and in its aforesaid subsidiary operated Paris and Canadian factories, as well as products made by a Spanish company, and distributed by it therefor; and doing an annual business of several millions, and an important factor in the industry concerned.

- (a) Acquired the stock of a concern similarly engaged, in substantial competition with it, in the sale of complete lines of corresponding competitive toilet articles sold throughout the United States under extensively advertised and known trade names, of the same price class and similarly sold to and through jobbers and retailers, etc., as above set forth, made in said competitor's New York Factory and also by a French company for which it distributed, with a highly profitable business, running into millions, and in a prosperous and strong financial condition, free from funded debt, and thereafter chose the officers and directors of said concern, made use of the equipment and other assets thereof, and dominated and controlled it; with the result that the effect of such acquisition might be and was to substantially lessen competition between the two, restrain commerce throughout the United States, and tend to create a monopoly in it in the business concerned; and
- (b) Acquired the stock of a company which it created and which, under a prior contract made by it, took over and carried on the domestic and foreign business of an organization, theretofore similarly engaged, in substantial competition with it, in the sale of complete lines of corresponding competitive toilet articles, sold throughout the United States, under extensively advertised and known trade names, of the same price class and similarly sold to and through the retail and jobbing trade, etc., as above set forth, made in the Chicago factory of said organization and abroad by it and its foreign subsidiaries, doing an annual domestic business of about \$2,000,000, and theretofore constituting an important factor in the industry involved, but obligated by the contract concerned, along with officers and stockholders, not to engage again in the business concerned for a ten-year period, and thereafter chose the officers and directors of said company, made use of the equipment and other assets thereof, and dominated and controlled it; with the result that the effect of such acquisition might be and was to substantially lessen competition between