

Complaint

IN THE MATTER OF

HAMILTON GARMENT COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 1713. Complaint, Oct. 23, 1929—Decision, June 30, 1930

Where a corporation engaged in the sale of various articles of merchandise by mail order, described itself as a manufacturer in its catalogues and made such representations as that it manufactured practically "all of the ready-to-wear in this catalogue", "Buying direct from the manufacturer you eliminate the middleman's profit and save \$5 to \$15", and "With our sanitary daylight factories under our close supervision we can give our customers the assurance of getting only the best quality", etc., the facts being that the women's coats and dresses referred to were made for it under contract pursuant to which the factory's entire output was contracted for, stock was removed from the factory to its workrooms and shipped therefrom to the buyer, it retained ownership of all goods and designs and reserved to itself right of inspection, supervision, and discharge of employees suffering from or afflicted with communicable diseases, or stopping of work on any garment not made in accordance with its design and plan, factories doing its work were large daylight establishments, meeting all requirements of the factory laws, it had thus taken entire output of some factories for ten or fifteen years past, and Bureau of Census insisted on classifying it as a manufacturer of garments and compelled it to report as such, but it had no proprietary interest in aforesaid factories or machines making said garments, or other control over the contractors' factory buildings or employees; with capacity and tendency to deceive and mislead the purchasing public into believing it to be the manufacturer of all or some of the products sold by it, eliminating profit of middleman in such instances:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Robert H. Winn for the Commission.

Mr. Henry Ward Beer, 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 by mail of various articles of merchandise direct to purchasers in various States, and with principal office and place of business in New York City, with advertising falsely or misleadingly as to composition and nature thereof and as to business status, in violation of the provisions of

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section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondent, as charged, engaged as above set forth, falsely or misleadingly described and advertised various articles dealt in by it in its catalogues distributed to its customers and prospective customers in various States, as follows:

(a) Fur coats, fur collars, fur cuffs and/or fur scarves not made from the pelts of the lynx, fox, raccoon, muskrat, squirrel, minx, seal, wolf, wolverine, beaver, or badger as "French lynx", "Atlantic beaver", "Mandel fox", "Mendoza beaver", "French beaver", "Raccoone", "Muskrette", "Silver stream squirrel", "Northern seal (dyed finest French coney)", "Manchurian wolf", "Fine wol-vereen", "Canadian wolf", "Canadian fox", "Fine mandel fur", "Mountain beaver", "Foxine", "Striped lynx coney fur", "Pointed French lynx", "Silver pointed Manchurian wolf", "Striped mink mandel fur", "Seal mandel fur", "Silver pointed French lynx fur", "Chinese badger fur", "Striped mink coney fur", "Mandel fox", "Genuine mink marmot fur", "Genuine vicuna fox", or "French fox";

(b) Women's felt hats, not imported into the United States as finished products from any foreign country, as imported, through use of such phrases as "Your choice in imported felts \$1.98";

(c) Leather goods not made from the skins of hippopotamuses or of lizards and snakes, alligators or other reptiles as "Reptile grain leather bag with alligator leather grain flap", "Lizard grain persian leather", "Water snake grain leather", "Snake and lizard grain persian leather", "Alligator grained leather", "Hippo calf leather", "Spanish brown python leather", "Alligator calf", and "Lizard grain trimmed";

(d) "Men's tourist traveling sets" as leatherette cases, when in fact not made of leather but of a product simulating the appearance or finish thereof;

(e) Coats not made from the pelts of any animal but of some other product as "Furtex broadtail fur fabrics", "Kara-kurl fur fabric", and "Fine Kerami fur fabric";

(f) Fabrics made in whole or in part from materials other than silk, the product of the cocoon of the silkworm as "Printed chiffon velveteen", "Printed pongette", "Lustrous silkette", "Silk-o-like", "Silk finished", "Radium satin", "Radium silk", "Fibre silk", "Rayon fibre silk", and "Sateen"; and as "Chiffon finished velveteen crêpe satin", "Very fine chiffon velvet", "Lapinex silk seal plush", "Silk ribbosene", "Silk velvet", "Bengaline silk",

"Satin", "Lyons velvet", "Silk Lyons velvet", "Baronet satin", "Seco milk", and "Canton silk";

(g) Fabrics made in whole or in part from a product or products other than wool as "Flannel", "All wool and merino yarn", "Wool velour", and "Wool mixed";

(h) Fabrics made of a product or products other than flax as "Crash linene";

(i) Fabrics faced with metal other than gold as "Embossed gold cloth";

(j) Women's gloves made of a product or products other than the skins of animals as "Suede" or "Chamois suede";

(k) Toilet articles and/or flatware made from a product or products other than ivory, the tusks of the elephant, pearl backs, and handles of toilet articles made from a product other than ivory, the tusks of the elephants, pearl, mother of pearl or amber, as "White ivora", "Silver pearl", "Solid sea pearl", "White pearl on ivory", "Lustrous pearl", "Pearl", "Gray pearl", "Gray pearl on solid amber", "Pearl on ivora", "Super pearl on amber", "Super pearl on amber pyralin", and/or "Mother of pearl";

(l) Watches containing on the outer surface a sheet of gold or of its alloy "less than one three-thousandths of an inch in thickness, and on the inner surfaces of less than one one-thousandth of an inch in thickness", and with "no marking in the said advertisements to indicate the fineness of the gold which is affixed to the watch cases", as "Rolled gold plate", "Guaranteed rolled gold plate", or "Gold filled";

(m) Products neither diamonds, pearls, crystals, sapphires, emeralds, jade or quartz but manufactured products as "Diamonds", "Sapphire cabachon", "Emeralds and sapphires", "Fine jade quartz stone", "Crystal beads", "Pearl beads", "Omar pearls", "Richelieu pearls", or "Indra pearls";

(n) Flatware not composed of silver but of another product or products and not composed of nickel in such substantial quantities so as to be properly represented and referred to as nickel, as "nickle silver";

(o) Flatware, the handles of which were hollow, and made by pressing or welding together thin shells of sterling silver as "solid silver";¹

Respondent, further, as charged, in its catalogues described itself as a manufacturer making such statements as "Hamilton manu-

¹ Charges embraced in subparagraphs a to o, inclusive, contained in paragraph 2 of the complaint.

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factures practically all of the ready-to-wear in this catalogue. The picture below shows very plainly how to save \$5 to \$15 by buying direct from the manufacturer", "Buying direct from the manufacturer you eliminate the middleman's profit and save \$5 to \$15", "With our sanitary daylight factories under our close supervision we can give our customers the assurance of getting only the best quality of workmanship and finish—The kind of quality clothes that will give you a much better service than you can possibly expect", notwithstanding the fact that respondent does not manufacture any of the goods dealt in by it nor own nor control any mills or machinery making any of said products.

Said acts and things, as alleged, "done by respondent in connection with the representations, designation, and description of its merchandise and status as hereinbefore set out have the capacity and tendency to mislead and deceive the purchasing public into the belief that the respondent's merchandise and status are as represented, designated, and described in respondent's catalogue", and, as charged, are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO 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, Hamilton Garment Co., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent, having entered its appearance and filed its answer to the complaint herein, entered into a stipulation with the chief counsel of the Federal Trade Commission whereby certain facts were agreed upon as the facts in this case and to be taken as such in lieu of testimony.

Thereupon this proceeding came on for consideration on the record herein, and the briefs having been filed, and oral arguments having been heard and duly considered, and the Commission being fully advised in the premises makes this its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Hamilton Garment Co. is a corporation organized, existing, and doing business 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 said State. It is now and has been for more than one year last past engaged in a mail-order business, selling various articles of merchandise direct to purchasers thereof located in various States of the United States. It causes the said merchandise when so sold to be transported from its said place of business in the said State of New York into and through other States of the United States to the purchasers thereof located in a State or States of the United States other than the State of New York. In the course and conduct of its said business respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and distribution of similar articles in commerce between various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, the respondent has been in its various catalogues describing itself as a manufacturer and representing to purchasers and prospective purchasers of respondent's goods that "Hamilton manufactures practically all of the ready-to-wear in this catalogue. The picture below shows very plainly how to save \$5 to \$15 by buying direct from the manufacturer". "Buying direct from the manufacturer you eliminate the middleman's profit and save \$5 to \$15". "With our sanitary daylight factories under our close supervision we can give our customers the assurance of getting only the best quality of workmanship and finish—The kind of quality clothes that will give you a much better service than you can possibly expect". In truth and in fact the respondent Hamilton Garment Co. does not own nor does it have any proprietary interest in any factory or machines that are in any factory in which are manufactured the garments advertised. Respondent Hamilton Garment Co. contracts with corporations, partnerships, firms, and/or individuals owning or controlling factories and machines in factories in which the said garments are made, for the entire output of these said factories while the said contract is in force. In its relations with the contractors, the Hamilton Garment Co. characterizes itself as the "manufacturer". The nature of the agreement between the Hamilton Garment Co. and the contractors is illustrated in the yellow, green, and white sheets which are hereto attached and made a part hereof marked Exhibits 4A, 4B, and 4C. This relationship is based upon the following conditions:

The stock is removed from the factory to the workrooms of the Hamilton Garment Co. and shipped directly from the Hamilton Garment Co. to the buyer. The Hamilton Garment Co. retains the ownership of all of the goods and designs and reserves to itself the

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right to inspect and supervise the work and to discharge employees suffering from or afflicted with communicable diseases, or to stop work at any time on a garment when the garment is not being made in accordance with its design and plan. The factories doing this work are large daylight factories and meet all of the requirements of the factory laws. The shipment to the customer is made by the Hamilton Garment Co. Other than as herein set out or as set out in the contract printed on Exhibits 4A, 4B, and 4C,² the respondent exercises no control over the factory building of, or the employees of the contractors. Some of the owners of these factories have contracted with the Hamilton Garment Co. so that the Hamilton Garment Co. has taken their entire output for the last ten years, Hamilton Garment Co. having been in business for fifteen years. The United States Bureau of Census insists on classifying the Hamilton Garment Co. as a manufacturer of garments and compels it to report as such. The only articles manufactured under this contract are what are known as "ladies' ready-to-wear", ladies' coats, and dresses.

PAR. 3. Catalogues published and issued by respondent and distributed to its customers and prospective customers located in various States of the United States are Exhibits 5, 6, 7, 8, and 9 herein.

PAR. 4. The use by the respondent of the word "manufacturer" to describe itself and the representation that certain of the products by it sold come direct from manufacturer to purchaser, as above set out, has the capacity and tendency to deceive and mislead the purchasing public into the belief that the respondent manufactures all or some of the products which it sells, and that in such instances, the purchaser by purchasing from the respondent is eliminating the middleman's profit.

CONCLUSION

The practices of the said respondent in advertising itself as a manufacturer under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors, and are unfair methods of competition in 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, the answer of the respondent, the stipulation of facts in lieu of testimony and briefs and oral argument, and the Commission having made its findings as

² Exhibits not published.

to the facts and 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, Hamilton Garment Co., a corporation, its officers, directors, agents, employees, and successors, in connection with the sale or offering for sale of coats, dresses, hats, furs, fabrics, or other wearing apparel, or merchandise, in commerce among the several States of the United States, or in the District of Columbia, cease and desist from making representations through catalogues, circulars, correspondence, stationery, or by any other means whatsoever, that respondent is a manufacturer of said products or that products so sold by it come direct from manufacturer to purchaser unless and until respondent actually owns and operates or directly and absolutely controls a factory or mill in which the products so sold by respondent are manufactured or made.

It is further ordered, That the complaint herein be and the same hereby is dismissed as to paragraph 2 thereof on the ground that the practices charged therein were abandoned by the respondent prior to the issuance of the complaint.

It is further ordered, That the respondent, Hamilton Garment Co., a corporation, 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.

IN THE MATTER OF
VIT-O-NET CORPORATION

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

Docket 1679. Complaint, June 3, 1929—Decision, July 7, 1930

Where a corporation engaged in the manufacture and sale of a so-called electric blanket, which (1) was made to be plugged into the ordinary house current, (2) was originated solely as an electric heating pad, fulfilled no therapeutic service other than the supplying of heat treatment, and could be used successfully only where heat could be so used, (3) was originated, promoted, advertised, and sold under the direction and sponsorship of an individual, a purported doctor, but in fact qualified neither as physician, electrician, nor scientist, with eighth-grade education only, (4) was sold through agents and distributors of whom sole qualification demanded was ability to sell, and (5) had been sold to the extent of a few thousand only; in advertising said blanket in newspapers, magazines, and periodicals of general circulation throughout the United States and through pamphlets, booklets, and circulars sent through the mails, and through agents to prospective purchasers, and without scientific tests as a basis therefor,

- (a) Falsely and misleadingly stated and represented, under such captions as "Science discovers the needed power", "To awake the greater health within you", that said blanket was the result of years of scientific research and countless tests, the greatest health discovery in recent years, approved and used by hospitals, physicians, athletes, society people, and persons of prominence, and a demonstrated success through many thousands of sales;
- (b) Falsely and misleadingly stated and represented that said article was of positive benefit in the prevention and cure of disease through its alleged electro-magnetic-radio qualities and their effect upon the cells and organs of the body in the elimination of waste, and the stimulation thereof to a vigorous and healthy condition in 95 per cent of diseases and ailments (attributed to faulty elimination), with many specified, and in the establishment and/or maintenance of vigorous and bouyant health, and great prolongation of life, and was contra-indicated in no ailment; and
- (c) Made numerous other unfounded and elaborate statements as to the supposed scientific and medical qualities, working and effects of said blanket, and through its "sales manual and treatment chart", for its numerous agents and distributors scattered over the country, solicited the prospective purchaser with studied statements and representations of similar tenor, and others calculated to appeal to his apprehensions for himself and/or members of his family, and to impress him with the falsely asserted and implied professional and scientific character and standing of the blanket and/or treatment and those responsible therefor, and associated therewith;

With the capacity and tendency to mislead and deceive customers and prospective customers through such known false and misleading statements, and to cause many to purchase and use said blanket with possible reliance thereon where use thereof would be highly dangerous to health and life, and