

Complaint

IN THE MATTER OF

MADISON MILLS, 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 1776. Complaint, Dec. 9, 1930.¹—Decision, Dec. 14, 1931

Where a corporation engaged in sale of men's shirts, pajamas, and underwear, through use of sample lines which exaggerated extent and variety of its stock, and through use of house to house canvassers, who collected and retained 25 per cent of purchase price as their commission, and forwarded orders for filling, and transmission direct to customers,

- (a) Made it a practice and followed a policy of shipping shirts differing in design, pattern, and style from those ordered, C. O. D., without privilege of inspection, and without first giving customer notice of exhaustion of stock of particular garment ordered and opportunity for further selection; with result that it collected from customers for shirts neither ordered, nor intended to be paid for, and many were disappointed and dissatisfied through not receiving shirts which it had been represented they were to receive;
- (b) Represented that dissatisfied customer's money would be returned "at once, without question," facts being that on frequent occasions refunds were not made except after months of "wrangling" or other annoying and unsatisfactory experiences to those interested in obtaining such refunds; and
- (c) Made use of such words as "Mills," "shirt manufacturers," "better Madison made shirts," "factory to wearer," "compare this factory to wearer price with that asked by retail stores for the same quality shirts," facts being that it had no mill for manufacturing, did not manufacture shirts advertised and sold by it, nor sell such shirts direct to consumers at a price including only one profit, but caused same to be made for it under contract with another and separate company, under a different name and at a different location, and at an expense which it passed on to the consumer;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of such product, and injure competitors to a substantial extent through unfairly diverting trade from them to it:

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

Mr. PGad B. Morehouse for the Commission

Mr. Maximilian Bader, 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

¹ Amended and supplemental complaint.

respondent, a New York corporation engaged in the sale and distribution of men's shirts to purchasers located in various States of the United States, and with principal place of business in New York City, with offering deceptive inducements to purchase through non-compliance with orders per sample, and unfulfilled money-back promises and guaranties, assuming or using misleading trade or corporate name, 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.

Respondent, as charged, engaged as above set forth, for more than one year last past, through the medium of agents, house to house canvassers, or through the mails direct to the purchaser, furnishes purchasers with certain samples, sample books and other printed matter, illustrating design, pattern, and material of said shirts and cautioning the purchaser to "be sure to mention style numbers wanted," and in addition thereto guarantees prospective purchasers and purchasers of its shirts that "if in fabric, in fit, and price they are not the best values ever seen by said purchasers, the said shirts may be returned at respondent's expense and the money will be refunded at once without question, and that the customer will be satisfied by respondent," and thereby solicits and obtains orders and cash remittances based upon particular selections. Notwithstanding aforesaid representations and guarantees, however, respondent, in cases in which particular design and pattern ordered is not in stock, makes it its practice, in order to promote sale of its products in such cases, to send customer some other selection, of respondent's own choosing, without offering customer a voice in the matter, or to return his money, and declines to make refunds to dissatisfied customers at once and without question, upon return of the shirts.

Respondent further, as charged, through use of corporate name, "Madison Mills, Inc." and phrases, "Better Madison Made Shirts," "Shirt Manufacturers," and "Factory-to-Wearer Price," on leaflets, pamphlets, sample cards, and other advertising literature, represents to purchasers and prospective purchasers that it "actually makes, manufactures, or fabricates the said shirts and that it owns, operates, or controls a mill or mills or other manufactory where such shirts are manufactured when in truth and in fact respondent does not own or operate or control any mill, mills, or manufactories at which said shirts are made or fabricated, but the shirts are actually manufactured for respondent under contract by another and separate company of a different name and at a different location, at an expense which is passed on to the consumer."

Said representations and practices of respondent, as alleged, "have the tendency and capacity to mislead and deceive purchasers, agents and customers of such agents" into the mistaken belief that ordering and buying shirts from respondent they "will receive satisfaction and will receive the article by them, or each of them, so ordered and paid for," and that they "are dealing directly with the manufacturer of the said shirts" and "are thereby eliminating a middleman's profit"; all to the prejudice of the public and 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Madison Mills, Inc., a corporation, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent filed its answer and the case was set down for the taking of testimony in due course before an examiner of the Commission. Without objection by respondent, evidence was adduced tending to prove that at the time of the hearings and for more than one year prior thereto the respondent did not own, operate, or control any mill or manufactory and did not itself manufacture, make, or fabricate its product as advertised. Thereafter, upon due notice the Commission issued and served its amended and supplemental complaint to conform to the aforesaid proof. Respondent filed its answer both to the original and to the amended and supplemental complaint and further evidence was taken.

Thereupon this proceeding came on for final hearing on the briefs and oral argument of counsel for the Commission, counsel for respondent having been duly notified and not having appeared to present oral argument. The Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Madison Mills, Inc., is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 560 Broadway, New York City, State of New York. It is now and for more than eight

years last past has been engaged in the sale and distribution of men's shirts, pajamas, and underwear to purchasers located throughout the various States of the United States. In the course and conduct of its business, respondent is in competition with other corporations, individuals, and partnerships engaged in commerce between and among the various States of the United States.

PAR. 2. Respondent sells its merchandise through the services of agents who canvass from house to house. The agent collects 25 per cent of the purchase price from the purchaser at the time the order is taken and retains said sum for his commission. The agent then forwards said order to the respondent who ships the goods direct to the consumer C. O. D. without the privilege of inspection, thus collecting the remaining 75 per cent of the purchase price. In soliciting such business, respondent through its agents and directly through the mail, distributes samples, sample books, and other printed matter, illustrating the colors, designs, patterns, and material of the shirts offered for sale and guarantees that if in fabric, in fit and price, they are not the best values ever seen by the purchaser, the shirts may be returned at its expense and the money refunded at once without question.

PAR. 3. The sample cards, such as Commission's Exhibit 1, contain small samples of cloth, each of which, in the absence of printed exceptions or notice to the contrary, is represented to be identical with the cloth composing the shirts which respondent will send in case the customer selects the particular sample and number. The sample card, Commission's Exhibit No. 1, contains no suggestion of substitution but cautions the agent and purchaser to be sure in ordering to mention pattern and style number and to give the letter designating the introductory sale lot. In other sample cards such as Commission's Exhibit 4, notice of substitution was given in case the stock should be short in any of four of the twenty-five numbered samples displayed. Also respondent now usually incloses with its sample cards a notice reading as follows:

IMPORTANT NOTICE

When selling fancy patterns, mention 2d choice. We *do not* guarantee to deliver exact patterns at all times. Fancy patterns are discontinued from time to time. Madison's liberal guaranty covers all purchases of our shirts.

Whenever we furnish a pattern, other than selected, the purchaser always has the right to return same and we will refund not only his money but the postage expense to which he has been put. Our policy is the customer is always right and must be satisfied.

Respondent also publishes and circulates among its agents a house paper called "The Mirror," which is sent out about once a month, but

sometimes a month's issue is omitted. This publication contains stock corrections in a list showing the regular numbers which have been exhausted and for which the agents should solicit no more orders. Agents are supposed to mark the discontinued numbers from their lists. Stock list corrections are also sometimes sent by postcard.

The time when the "important notice" aforesaid was printed and sent out was not known to respondent's officers, and it appeared from the evidence that notices were not sent to some of the customers nor to some of the agents. One Anton R. Johnson testified that if he had seen any such notice, he never would have ordered from the respondent. Mr. Johnson had made his purchase in a territory where agents of a competitive company had been taking orders for shirts. One agent in New Jersey, a Mr. Risdon, also testified that he never saw any such "important notice" before it was handed to him at the time of his testimony; that many orders were improperly filled and substitutions made although he corrected his list in accordance with all notices sent out by the company. From all the evidence the Commission finds that there was not a consistent use of such notices and in many instances they were not sent at all to agents and customers.

The evidence shows that it is and has been the practice and formulated policy of the respondent, when the particular shirts ordered are out of stock, instead of shipping customers shirts of the design, pattern, and style ordered and paid for, to ship its customers shirts of substituted designs, patterns, and styles of its own selection. By reason of the fact that such shipments are made C. O. D., without the privilege of inspection, respondent collects from its customers in such cases the remaining 75 per cent of the purchase price for that which said customers did not order and did not intend to pay for, without first giving such customers notice thereof or opportunity to make a further selection of their own.

The Commission finds that the respondent procures sales by representing to the prospective purchasers and leading them to believe that it will ship shirts of the designs, patterns, or styles selected and ordered by the said purchasers. When considering the aforesaid practice and formulated policy of respondent such representation is untrue in those numerous instances where substitutions have been and are being made.

PAR. 4. As a consequence of respondent's aforesaid practice and policy a great many customers were disappointed and dissatisfied by not receiving the shirts which respondent had represented they were to receive.

It appears from the testimony of M. M. Samuels, treasurer of respondent, that the returned goods averaged about 3,000 shirts per year and from the testimony of Charles Hickman and Guy Peterson, that many unsatisfactory shipments were not returned. In one case, witness did not want to take the extra trouble. In another case, circumstances rendered necessary the purchaser's retention of the undesired substitute.

George T. Risdon, an agent, testified that fully 40 per cent of his orders were filled unsatisfactorily. The Commission finds that the percentage of returns was in excess of the amount testified to by the officer of the respondent aforesaid; that the testimony throughout discloses a system and practice on the part of respondent of securing orders by the use of sample lines which did not, in a great many cases, represent the actual stock it had for delivery, but exaggerated the extent and variety of such stock and induced customers to order who would not have done so had the true state of affairs been revealed.

One of many instances set forth in the transcript of testimony is here set forth as illustrating the nature of customers' and agents' grievances:

Charles Hickman, Forsyth, Mont., testified that he received the sample card in evidence as Commission's Exhibit 1, and from it ordered three numbers, none of which even approximated the samples either in quality or design; that these differences are shown by the samples and attached clippings displayed in Commission's Exhibit 1; that other orders which he had given respondent were filled by substitutions; that instructions were disregarded and money not refunded satisfactorily; that on one occasion he designated a second, third, and fourth choice but received a shirt entirely different from any of them; that he had received the stock list corrections and kept his line up to date but had never seen the printed slip entitled "important notice"; that six shirts were ordered at one time for a Mr. Stickler and only one shirt came as ordered, five were substitutions both in material and pattern; that substitution was made in disregard of direct and specific instructions to the effect that shipment be not made unless the order could be filled as specified; that return of money was not made in one case until after "three months' wrangling"; and that on account of having had previous annoying and unsatisfactory experience in obtaining refunds for goods returned and because of the extra trouble, inconvenience and delay, some shirts were retained by customers although not satisfactory and not according to order.

Under the practice and policy of respondent, as shown by the evidence, the Commission finds that respondent's representation that a dissatisfied customer's money will be returned "at once, without question" is often untrue and, owing to the manner of its use in inducing sales of respondent's product, constitutes a false and misleading statement by respondent.

PAR. 5. The Commission finds that respondent, on certain exhibits, through the use of the words "mills," "shirt manufacturers," "better Madison made shirts," "factory to wearer," "compare this factory to wearer price with that asked by retail stores for the same high quality shirts," represents itself as making the shirts it sells and, in effect, that because of this, it sells them direct to the consumer at a better price, quality considered, than those of its competitors who reach the consumer through retail distribution.

Mr. A. H. Samuels, treasurer of the respondent company, testified that on June 16, 1930, the shirts were manufactured upon respondent's order by Otto Schoen & Co. at Glens Falls, N. Y.; that in 1928 respondent had factories in Troy, N. Y., Paterson, N. J., or at Coxsackie, N. Y.; but that in 1930 it was having the work done under contract; that Madison Mills buys the dress goods and pays the Schoen company for the sewing, cutting, and labor, and that the employees actually manufacturing the shirts are paid by the Schoen company. Milton M. Samuels, secretary of respondent, corroborated this testimony.

By stipulation it was agreed that certain relevant correspondence might be considered by the Commission to the same full intent and effect as though Mr. A. H. Samuels had so testified, and this correspondence appears in the record as Commission's Exhibits 9 and 11 from which the situation with reference to the manufacturing of shirts was disclosed by Mr. A. H. Samuels as follows:

Please be advised that in the year of 1928, we conducted a factory under our own name and the premises of which was leased by us in our own name, at 2 River Street, Troy, N. Y. In this factory, all the employees were paid directly by us and no work was done excepting for us.

Prior to that date, we conducted a factory at Paterson, N. J. The premises in that city were also leased by us in our own name, and all the employees were paid directly by us and all the work produced was for our own use.

Prior to that factory we conducted a factory at 503-505 Broadway, New York, where the same conditions prevailed.

During 1928 we decided to discontinue our Troy factory. We have since that time continuously manufactured shirts, but have changed our system of manufacturing somewhat. Instead of leasing the places in our own name, the leases are in the names of third parties. Nevertheless, the property in the goods manufactured, is at all times in us. The goods are delivered in the piece to the factory and are shipped back to us as completed shirts. In addition to the

Findings

15 F. T. C.

piece goods, we supply the buttons, the linings, the trimmings, the labels, the boxes, etc. Instead of paying the help directly, the employees are paid by the man who is conducting the factory, and we make an arrangement with this party, whereby we pay him a definite amount per dozen for the labor. This amount is based on the labor conditions prevailing, and in same we include a certain amount for his superintendence and overhead.

Under this system we are manufacturing just as much as we were under the previous systems when we leased the premises in our own names and paid the employees directly.

Such a system is employed by us at Coxsackie, N. Y. The shirts made in the factory at Coxsackie, N. Y., are at all times our shirts. When the goods are shipped to us they are really shipped by ourselves to ourselves.

The only payment which is made to Coxsackie, is the payment of the labor and the superintendence arrived at as above. The factory at Coxsackie is under our control and no other shirts are produced there, excepting our shirts—unless conditions are such that we can not keep the plant busy and may lose help thereby. Under such conditions—with our consent—shirts may be made for third parties.

At various times we have made goods at other places as well as Coxsackie.

As you understand, manufacturing conditions change with business conditions, and naturally we do not keep manufacturing just for the sake of manufacturing—if we haven't the outlet for all the goods produced—or if we happen to have a large stock of goods on hand which we are trying to dispose of.

If conditions improve we are likely to open up a new factory at any time, and if conditions are not so good we are liable to close down a factory which is in operation.

We nevertheless are manufacturers at all times, making the goods that we distribute according to the demand for same, and increasing our production and decreasing same in proportion as the demand increases or decreases for our product.

As a matter of fact we haven't any factory building, nor have we owned any factory building since 1928, with the exception of our factory at No. 2 River Street, Troy, N. Y., which was leased in the name of Madison Mills, Inc.—the rent being paid to Messrs. Crouse & Eckert, at Utica, N. Y.

We believe that this concern owns the building. With the exception of this lease we haven't been the lessees of any building used as a factory since 1928.

This factory at No. 2 River Street has since been discontinued for the simple reason that we have enough goods on hand, and have had enough goods on hand for the last few years, so that it is not necessary for us to keep manufacturing. This is all covered in our letter of March 9, 1931.

At present, the factory at Coxsackie, N. Y., is run by Mr. G. Wilson. For further details as to this we also refer to our letter of March 9.

There is no written agreement between us and Mr. Wilson, nor has there ever been a written agreement between us. We have enough confidence in each other to make it unnecessary to have a written agreement, and the overhead and other expenses are determined after conferences and discussions.

The Commission finds that the aforesaid Mr. Wilson's profit, as well as respondent's profit, is included in the price at which said shirts are sold to the consumer, and that as a matter of fact respondent has no mill for manufacturing, does not manufacture the shirts

375

Order

by it advertised for sale and sold, and does not sell the shirts direct to the consumer at a price which includes only one profit, but that when and as necessary the shirts are manufactured for respondent under contract by another and separate company of a different name at a different location, and at an expense which is passed on to the consumer.

PAR. 6. The foregoing acts, practices, representations, and guaranties, and each of them, made and done by respondent have had and do have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's products and have a tendency to injure, to a substantial extent, competitors of respondent by unfairly diverting trade from such competitors to the respondent.

CONCLUSION

The acts and practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors; are unfair methods of competition in 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 complaints of the Commission, the answers of respondent, briefs and oral arguments, on behalf of both the counsel for the Commission and respondent, and the Commission having made its findings as 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, Madison Mills, Inc., a corporation, its agents and employees, in connection with the advertisement, sale or distribution by it in interstate commerce of shirts, do cease and desist, as follows:

(1) Where shipments are made to customers C. O. D. without privilege of inspection, from representing, directly or indirectly, to purchasers or prospective purchasers that it will ship shirts of the designs, patterns, or styles selected and ordered by the said purchasers, unless and until it refrains from substituting shirts of designs, patterns or styles of its own selection different from those by the said purchasers so selected and ordered.

Order

15 F. T. C.

(2) From representing, directly or indirectly, to prospective purchasers that if the said purchasers are dissatisfied, the purchase price will be refunded at once without question, unless and until it actually does make prompt refunds whenever a shirt is returned by a dissatisfied customer.

(3) From directly or indirectly representing, through the use of such phrases as "Madison made shirts," "mills," "shirt manufacturers," "factory to wearer price," that it is the manufacturer of products sold and distributed by it until such time as said respondent does actually own, operate, or control a manufactory wherein are fabricated or made the shirts which it so sells and distributes.

It is further ordered, That the said respondent within 60 days from and after the date of service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
PHILADELPHIA HOSIERY MILLSCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1922. Complaint, Apr. 16, 1931¹—Decision, Dec. 14, 1931*

Where a corporation engaged in manufacture and sale of children's stockings with a 70 per cent cotton, and 25 per cent rayon, content, and with wool content which did not suffice to impart warmth or durability to the article, or add any functional value thereto, amounted to 5 per cent, was inconsequential, and not enough to justify use of word "wool" at all in connection with the stockings, stamped the same "70 per cent wool and rayon"; with capacity and tendency to deceive its retail customers and buying public, and induce purchase of said stockings in reliance on truth of said statements as to wool and rayon content thereof, and with effect of diverting trade to it from competitors truthfully and accurately describing their products, and with tendency so to do:

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

Mr. Alfred M. Craven for the Commission.

Hon. J. Will Taylor, of Philadelphia, Tenn., 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 Tennessee corporation engaged in the manufacture and sale of children's stockings, and with principal place of business and factory at Philadelphia, Tenn., with 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.

Respondent, as charged, engaged as above set forth, stamps each of its stockings "70 per cent wool and rayon," and said stockings reach consuming public through various retail dealer customers and other retail merchants, branded and stamped as above set forth. "Actual content of the stocking bearing said stamp or brand is approximately by weight 70 per cent cotton, 25 per cent rayon, and 5 per cent wool, so that the combined wool and rayon content is approximately 30 per cent instead of 70 per cent as represented, and the wool content is inconsequential and insufficient to impart to the

¹ Amended.