

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.

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stocking any desirable quality, such as warmth or durability or to add any functional value to said stocking and is not a sufficient content to entitle the respondent to use the word "wool" at all in connection with the description of said stocking," wool concerned having been added solely to deceive public and to induce purchase of article, as and for one with substantial amount of wool, by those who consider wool content desirable in a stocking.

Said stamp or brand, as alleged, "was designed to deceive and has the capacity and tendency to deceive the customers of respondent and also the purchasing public and to cause them to purchase said stockings in the belief that the statement as to the wool and rayon content is true, and that said stockings contain a substantial amount of wool"; all to the prejudice of the public and respondent's competitors, who include many "engaged in the manufacture and sale, or in the sale, of children's stockings made of wool, silk, rayon, and other materials, which stockings are by them described truthfully and accurately as to content."

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 (38 Stat. 719), the Federal Trade Commission on the 16th day of April, 1931, issued its amended complaint against the respondent, Philadelphia Hosiery Mills, 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 said amended complaint, hearings were had before a trial examiner theretofore duly appointed, testimony was heard and evidence was received in support of the charges of the amended complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing on brief of counsel for the Commission, no brief having been filed on the part of the respondent, 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 its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Philadelphia Hosiery Mills, erroneously named in the original complaint as Philadelphia Knitting Mills is a corporation organized under the laws of the State of

Tennessee, with its principal place of business and factory at Philadelphia in said State. It is now and has been for many years engaged in the manufacture at its said factory of children's stockings and the sale thereof through a selling agency at New York City to retail merchants throughout the United States. It causes its said stockings when sold to be transported from its factory in interstate commerce into and through States of the United States other than that of Tennessee to the purchasers thereof at their respective points of location in the various States. In the course and conduct of its said business the respondent is and has been in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and transportation or in the sale and transportation of children's stockings in interstate commerce between and among the various States of the United States.

PAR. 2. The respondent in the course and conduct of its business as above described, places at its factory upon each of the stockings made and sold by it, the following stamp or brand:

70 per cent wool
and rayon

the said stockings reach the consuming public through the various customers of the respondent throughout the United States and other retail merchants, branded and stamped as above set forth.

The said stamp or brand is false and misleading in that the 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 stocking any desirable quality such as warmth or durability or to add any functional value to said stocking and is not a sufficient content to entitle the respondent to use the word "wool" at all in connection with the description of said stocking.

PAR. 3. The stamp or brand mentioned in paragraph 2 hereof has the capacity and tendency to deceive the customers of respondent and also the purchasing public and to cause them to purchase said stockings in the belief that the statement as to the wool and rayon content is true.

PAR. 4. Among the competitors of respondent, mentioned in paragraph 1 hereof, are many who are engaged in the sale of children's stockings, in interstate commerce, which stockings are made of wool, silk, rayon, and other materials, and are by the manufacturers thereof

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described truthfully and accurately as to content. The misrepresentations by the respondent of the content of the stockings which it manufactures tends to and does divert trade from such competitors.

CONCLUSION

The practices of the said respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors 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 amended complaint of the Commission, the answer of the respondent, the testimony introduced, and brief on the part of the attorney for the Commission, the respondent upon due notice having failed to file brief, and the Commission having made its findings as to the facts and its conclusion that said 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, Philadelphia Hosiery Mills, a corporation, its officers, agents, and employees, in connection with the sale or offering for sale of its products in interstate commerce between and among the various States of the United States and in the District of Columbia, cease and desist from:

(1) Representing by means of brands, stamps, advertisements, or in any other manner that the stockings manufactured and sold by it contain wool unless such stockings do contain wool in a substantial amount.

(2) Representing by means of brands, stamps, advertisements, or in any other manner that such stockings contain wool, rayon, or any other material in excess of the actual amount of such material contained therein.

It is further ordered, That the said respondent shall, within 30 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 hereinbefore set forth.

Complaint

IN THE MATTER OF
NORTHAM WARREN CORPORATIONCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1937. Complaint, Apr. 8, 1931—Decision, Dec. 14, 1931*

Where a corporation engaged in manufacture of toilet articles and preparations, including those used for manicuring the nails and care of the cuticle, and in the sale thereof, under its trade name, in competition with some 75 or 80 other concerns similarly engaged, and doing a business of two or three million dollars a year, extensively advertised and reproduced in women's periodicals and otherwise photographs of and testimonials by actresses of outstanding fame and women widely known by reason of their social prominence or otherwise, without disclosing that preparation by the advertisers of such testimonials for the signature and approval of said personages had been preceded by payment to them of substantial sums by said advertisers, and their agreement not to indorse any other similar preparation for a period of years, and to test adequately advertiser's preparation here in question; with capacity and tendency to mislead and deceive ultimate purchasers of such preparations into the erroneous belief that said testimonials were entirely voluntary and unbought, and with effect of diverting trade from competitors, who do not use purchased testimonials in advertising their products, and with tendency so to do:

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

Mr. Richard P. Whiteley for the Commission.

Breed, Abbott & Morgan, 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 manufacture of toilet articles and preparations, including products designated and referred to by the trade name "Cutex," and sale thereof in commerce between and among the various States, and with principal place of business in New York City, with advertising falsely and misleadingly as to testimonial indorsements, in violation of the provisions 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, in advertising its "Cutex," products in magazines of interstate circulation, published testimonials or indorsements obtained by it "from individuals socially and/or theatrically or otherwise prominent and well known to the American public," as the genuine, voluntary or unbiased opinions