

Complaint

IN THE MATTER OF
HARRY WEISS TRADING AS WEISS SHIRT COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2195. Complaint, June 11, 1934—Decision, Jan. 16, 1935

Where an individual engaged in the manufacture of shirts and sale thereof to jobbers and retailers—

Sold shirts respectively labeled "144 x 76", and "2 x 1", notwithstanding fact that materials of which said shirts were composed were of a cheaper and inferior grade than thereby understood by a substantial number of the purchasing public, in that the "count" in the former did not contain 147 x 76 threads per square inch, but only 106 x 57 threads, and the "ply" in the latter did not consist of two strands twisted together into a single thread, but was only a "1 x 1";

With capacity and tendency to deceive and mislead jobber and retailer purchasers of said shirts, and with effect of enabling other such jobbers and retailers to mislead and deceive purchasing public into the belief that said shirts contained the "count" and "ply" thus represented, and induce purchase thereof in reliance on such erroneous belief, and unfairly divert trade from competitors, including those who sell shirts properly labeled as to "count" and "ply":

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

Mr. Morton Nesmith for the Commission.

Zukernick & Stein, of New York City, for respondent

COMPLAINT

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 having reason to believe that Harry Weiss, doing business as The Weiss Shirt Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Harry Weiss, is an individual doing business under the name and style of Weiss Shirt Company and his principal office and place of business is located in the City of New York in said State. Said respondent has been for more than one year last past, engaged in the manufacture of shirts and the

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sale of same between and among the different States of the United States. Said respondent has manufactured and sold, and has caused and still causes, the said articles in which he deals to be transported from his said place of business into and through other States of the United States to various jobbers and retailers located at points in various States of the United States. In the course and conduct of his said business, the respondent is in competition with other individuals, partnerships and corporations, engaged in the manufacture, sale and transportation of shirts in commerce between and among the various States of the United States.

PAR. 2. For many years prior to the date hereof cotton cloth has been and is now graded as containing a certain "count", which indicates the number of threads per square inch, and a certain "ply", which indicates the strands or number thereof twisted together into a single thread, the latter being woven into the cloth or material; the smaller count or number of threads per square inch representing the cheaper grade of cotton cloth, and the greater count or larger number of threads per square inch representing the higher priced cotton goods; also the single "ply", or "1 x 1", being less expensive than the double "ply" or "2 x 2", or the "2 x 1" (meaning 2 strands twisted together into a single thread running the full length and a single strand or thread running the width). The consuming public has, in recent years, become cognizant of these facts, and now considers cotton cloth, and especially broadcloth, with a high "count" and "ply" to be superior to and more desirable than that containing a low "count" and "ply."

PAR. 3. (a) That the respondent, Harry Weiss, doing business as Weiss Shirt Company, in the course and conduct of his business as aforesaid has manufactured and sold to various jobbers and retailers, and still does manufacture and sell to various jobbers and retailers certain shirts which, among other things, respondent plainly labels as follows: "144 x 76."

(b) That said respondent, Harry Weiss, doing business as Weiss Shirt Company, in the course and conduct of his business as aforesaid has caused and still causes certain other of his shirts to be sold to various jobbers and retailers, which said shirts, among other things, respondent plainly labels as follows: "2 x 1."

PAR. 4. (a) In truth and in fact the shirts so manufactured, labeled, and sold as described in paragraph 3 (a) are not made from materials containing a "144 x 76" count, but to the contrary are made from materials containing a far less count, viz, "106 x 57", and the labels so spaced upon said shirts by the respondent have the capacity and tendency to, and do mislead many among the aforesaid trade

and many of the consuming public into the belief that respondent's said shirts are manufactured from material containing a count of "144 x 76" as described in paragraph 2, and causes many of the said trade and many of the consuming public to purchase respondent's products in that belief.

(b) In truth and in fact the shirts so manufactured, labeled, and sold and described in paragraph 3 (b) hereof contain not a "2 x 1" ply, but to the contrary a "1 x 1" and the label so placed upon said shirts by the respondent has the capacity and tendency to, and does mislead many among the aforesaid trade and many of the consuming public into the belief that respondent's said shirts contain a "2 x 1" ply or double strand as referred to in paragraph 2 hereof, and causes many of the said trade and many of the consuming public to purchase respondent's product in that belief.

PAR. 5. The respondent, Harry Weiss, doing business as Weiss Shirt Company, in the manufacture of his shirts as aforesaid, ships and delivers his said products so labeled to his aforesaid jobbers and retailers. Said jobbers and retailers resell said shirts so labeled to the consuming public.

PAR. 6. There are among the competitors of respondent, referred to in paragraph 1 hereof, many persons, firms and corporations who manufacture and sell shirts, and sell their products properly labeled according to the count and ply, and the use by the respondent of said mislabeling or misbranding of his products as described in paragraph 3 hereof, has unfairly diverted trade from, and otherwise injured and prejudiced respondent's competitors in interstate commerce.

PAR. 7. The above alleged acts and things done by respondent are all to the injury and prejudice of the public and of the competitors of respondent, in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

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 Harry Weiss, an individual, trading under the name and style of Weiss Shirt Company, charging him with the use of unfair methods of competition in commerce in violation of said act.

Findings

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Respondent, through counsel, filed his answer to said complaint within the prescribed time and thereafter a hearing was had before a trial examiner theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint, and in opposition thereto.

Thereafter this proceeding came on regularly for final hearing before the Commission on the complaint, answer, testimony and evidence received, and briefs by counsel for the Commission and counsel for respondent, and, the respondent's counsel having waived oral argument, said cause was duly submitted and the Commission having duly considered the record and being duly 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, Harry Weiss, an individual, doing business under the name and style of Weiss Shirt Company, is a resident of the City of New York, State of New York, with his principal office and place of business located in the City of New York in said State, and is now and has been for more than one year last past engaged in the manufacture of shirts and the sale of same to various jobbers and retailers located in the State of New York and various jobbers and retailers in States other than the State of New York. He has caused and still causes said shirts when sold to be shipped from his place of business in New York to purchasers thereof located in the State of New Jersey and other States, and in the course and conduct of said business respondent was at all times hereinbefore referred to in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution in interstate commerce of shirts.

PAR. 2. For many years prior to the issuance of said complaint cotton cloth has been and is now graded as containing a certain "count", which indicates the number of threads per square inch and a certain "ply" which indicates the strands or number thereof twisted together into a single thread, the latter being woven into the cloth or material; such materials with the smaller "count" and "ply" constitute the inferior or cheaper grades and the materials with the higher "count" and "ply" constitute the better and more expensive grades; that the purchasing public has become cognizant of these facts and prefer the materials of the higher "count" and "ply".

PAR. 3. The respondent in the course and conduct of his said business manufactured and sold to various jobbers and retailers in interstate commerce certain shirts which, among other things, re-

spondent plainly labeled "144 x 76", said figures indicating the "count" of the materials from which his shirts were manufactured and a substantial number of the purchasing public were cognizant of this manner of grading.

PAR. 4. Respondent in the course and conduct of his said business manufactured and sold to various jobbers and retailers in interstate commerce certain shirts which, among other things, respondent plainly labeled "2 x 1", said figures indicating the "ply" of the materials from which respondent's shirts were manufactured and the purchasing public were cognizant of this manner of grading.

PAR. 5. In truth and in fact the shirts said respondent manufactured, labeled and sold as described in paragraph 3, were not made from materials containing a "144 x 76" "count" but to the contrary were made from materials containing a far less "count" viz: "106 x 57".

PAR. 6. In truth and in fact the shirts so manufactured, labeled and sold as described in paragraph 4 hereof were not made from materials containing a "2 x 1" "ply" but to the contrary were made from materials containing a "1 x 1" "ply".

PAR. 7. There are among the competitors of respondent many persons, firms and corporations who manufacture and sell shirts, and sell their products properly labeled according to the "count" and "ply" and the practice by respondent of said mislabeling and misbranding of his products as described in paragraphs 3 and 4 hereof, has unfairly diverted trade from, and otherwise injured and prejudiced respondent's competitors in interstate commerce. That the use of said practices by the respondent has had and has the capacity and tendency to mislead and deceive certain jobbers and retailers to whom said shirts are sold and has furnished to certain other jobbers and retailers means whereby they have been and are enabled to mislead and deceive the purchasing public into the belief that said shirts offered for sale and sold by the respondent contain the "count" and "ply" as represented by said labels and to induce the purchase of said shirts in reliance on such erroneous belief.

CONCLUSION

The practices of respondent under the conditions and circumstances described in the above and foregoing findings as to the facts are all to the injury and 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

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ORDER TO CEASE AND DESIST

This proceeding having been duly heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony in support of the charges of said complaint and in opposition thereto, and briefs filed by counsel for the Commission and counsel for respondent, 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 respondent Harry Weiss, doing business under the name and style of Weiss Shirt Company, his agents, servants or employees, in connection with the manufacture and sale or offering for sale or distribution in interstate commerce of shirts, cease and desist directly or indirectly from:

First.—Labeling, branding, designating, describing, or representing shirts as contained "144 x 76" count or using the figures "144 x 76" in any way so as to import or imply that the materials from which said shirts are made contain "144 x 76" count when such is not the fact.

Second.—Labeling, branding, designating, describing, or representing shirts as containing "2 x 1" ply or using the figures "2 x 1" in any way so as to import or imply that the materials from which said shirts are made contain "2 x 1" ply when such is not the fact.

Third.—Misrepresenting by labels, brands, or in any other way, the count or ply of the materials from which his shirts are manufactured.

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

Complaint

IN THE MATTER OF
CREOMULSION COMPANY, INC.

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

Docket 2244. Complaint, Oct. 31, 1934—Decision, Jan. 21, 1935

Where a corporation engaged in the sale and distribution of a medicinal preparation; in its advertisements thereof in various publications, and through radio broadcasts, advertising literature, and otherwise—

- (a) Represented that it constituted a cure for colds that hang on and that it would check the growth of germs, and that coughs or colds could be stopped by the use thereof, through such statements as "coughs from colds may lead to serious trouble. You can stop them now with Creomulsion. * * * attacks the seat of the trouble and checks the growth of the germs", "For the cough from colds that hang on", "developed as a maximum help for colds that hang on", "Coughs—Don't let them get a strangle hold. Fight germs quickly"; and
- (b) Represented said preparation as a preventive of pneumonia, and as having a tonic effect through such statements as "Colds may develop into pneumonia", "coughs from colds may lead to serious trouble. You can stop them now with Creomulsion", etc., as above set forth, and "Beware of the cough from colds that hang on", "Colds that develop into pneumonia", "goes farther and reaches the cause of the cough from inside", and "excellent for building up the system after colds or flu";

The facts being that said statements were incorrect, exaggerated, and misleading, and had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of said products into the erroneous belief that it constituted a competent treatment for coughs from colds that hang on and could be relied upon to prevent flu or pneumonia, and constituted a germicide:

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

Mr. John W. Hildrop for the Commission.

COMPLAINT

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, having reason to believe that Creomulsion Company, Inc., a corporation, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows: