

Complaint

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IN THE MATTER OF

LOUIS DUBINOFF, TRADING AS FAMOUS PURE SILK
HOSIERY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2297. Complaint, Feb. 14, 1935—Order, Nov. 27, 1935*

Where an individual, engaged in the sale of hosiery through salesmen who solicited and transmitted orders therefor—

- (a) Falsely represented that he owned, operated or controlled a mill or factory in which products dealt in by him were made;
- (b) Represented that he was a direct mill distributor, facts being he purchased products dealt in by him from manufacturers thereof or through their agents and from jobbers and wholesalers for resale on his own account, and was not such a distributor, but a retailer of hosiery;
- (c) Falsely represented that the hosiery offered and sold by him was "run-proof", facts being it was not run-proof as known to trade and public, meaning that a run would not occur when a thread breaks and releases a second thread with a resulting so-called "run"; and
- (d) Guaranteed his said product as "run-proof", facts being customers had at times neither received hosiery purchased nor any refund of the money paid therefor, and had returned hosiery as unsatisfactory and received no return or refund of the money paid or other hosiery in place thereof;

With capacity and tendency to mislead the purchasing public into the belief that said representations were true and into the purchase of its said product in reliance on such erroneous beliefs, and to divert trade to said individual from competitors offering and selling hosiery truthfully advertised and described, through salesmen or solicitors, mail orders and otherwise:

Held, That such practices were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. James M. Brinson for the Commission.

Mr. Jacob Lipman, of Newark, N. J., 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 Louis Dubinoff trading as Famous Pure Silk Hosiery Co., hereinafter called respondent, has been or 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:

PARAGRAPH 1. Respondent Louis Dubinoff is an individual who is now trading and for more than a year last past has been trading under the firm name and style of Famous Pure Silk Hosiery Co., with his offices and principal place of business at Newark in the State of New Jersey. He is now and for more than a year last past has been engaged in the sale of hosiery from his said place of business in, among and through the various States of the United States, by means of or through duly authorized salesmen who solicit orders for such hosiery and thereupon transmit the same to respondent at his said place of business. Thereafter respondent fills or pretends to fill such orders by transporting or causing to be transported from his said place of business into or through the several States of the United States hosiery of various kinds or sorts to the persons from whom the orders were obtained by his salesmen.

In the course and conduct of his business, respondent Louis Dubinoff has been or was at all times herein mentioned in competition with other individuals, firms, partnerships and corporations engaged in the sale and distribution of hosiery in interstate commerce.

PAR. 2. Respondent Louis Dubinoff, in the course and conduct of the business described in paragraph 1 hereof, has offered for sale and sold his hosiery through his duly authorized salesmen and solicitors, as aforesaid, by means of the following false representations and statements, to wit:

- (a) That he was a direct mill distributor;
- (b) That he owned, operated or controlled a mill or factory in which the products were made or fabricated which he sold and distributed;
- (c) That extra length stockings would be furnished without extra charge;
- (d) That the hosiery sold and distributed by him was guaranteed for a period of from three to five months;
- (e) That such hosiery was run-proof;
- (f) That such hosiery was full-fashioned;
- (g) That hosiery furnished by respondent would conform in size, color, length, and quality to orders.

In truth and in fact respondent Louis Dubinoff has not owned, controlled or operated, and does not own, control or operate any mill or factory wherein the products sold and distributed by him have been or were made or fabricated. On the contrary he purchased such products from manufacturers thereof, and from jobbers and wholesalers. He has not been and was not a direct mill dis-

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tributor, but has been and is a retailer of hosiery. He has not furnished and does not furnish extra length stockings to customers without extra charge. His products were not and have not been guaranteed; were not and have not been run-proof; and were not and have not been manufactured in whole or in part in accordance with the process used in the manufacture of "fashioned" or "full-fashioned" hosiery. His products have not been and were not such products as have been or are known to the trade and the purchasing public as "run-proof", or as "fashioned", or "full-fashioned" hosiery.

Respondent Louis Dubinoff, in addition to use of the above and foregoing false representations and statements, in offering for sale and selling his products, has used the following methods and practices, to wit:

He has filled certain orders received by him with hosiery which was of different size, color, length, or quality, or different in all such respects than hosiery ordered, and in certain instances he has failed and neglected to supply or furnish hosiery after receiving orders with deposits. He has also failed and neglected promptly in any instances, or at all in many instances, to adjust or correct orders improperly filled, or to refund money received in connection therewith.

PAR. 3. There are now and for more than a year last past have been individuals, partnerships and corporations, offering for sale and selling in commerce among and between the various States of the United States by means of salesmen, solicitors, mail orders, and otherwise, hosiery of all kinds.

PAR. 4. The aforesaid representations of respondent, described in paragraph 2 hereof, have had and have the capacity and tendency to mislead and deceive the public into the purchase of respondent's hosiery in reliance on their truthfulness, or the truthfulness of one or more of them.

Said representations of respondent have had and each of them has had the capacity and tendency to divert trade to respondent from competitors offering for sale and selling hosiery in interstate commerce.

PAR. 5. The practices of respondent, described in paragraph 2 hereof, are all to the prejudice of the public and of respondent's competitors, and have been and are unfair methods of competition in interstate commerce in violation of the provisions 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."

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 Louis Dubinoff, trading as Famous Pure Silk Hosiery Company, hereinafter called respondent, charging him with the use of unfair methods of competition in interstate commerce in violation of the provisions of said act.

Respondent Louis Dubinoff, trading as Famous Pure Silk Hosiery Company, filed his answer herein. Testimony and evidence were duly received before an examiner of the Commission theretofore duly appointed for such purpose, in support of the complaint and on behalf of respondent. Thereupon this proceeding having come on for final hearing on the record and on brief in support of complaint, respondent, having failed to submit either brief or oral argument, and the Commission having considered the record and being fully advised in the premises, finds that this proceeding is in the interest of the public and now files this its report in writing, setting forth its findings as to the facts and its conclusion drawn therefrom, as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Louis Dubinoff is an individual who is now trading and for more than a year last past has been trading under the firm name and style of Famous Pure Silk Hosiery Company, with his office and principal place of business at Newark in the State of New Jersey. He is now engaged and for more than a year last past has been engaged in the sale of hosiery from his said place of business among and between the State of New Jersey and the various other States of the United States and the District of Columbia. It has been and is the practice of respondent to transport or cause to be transported hosiery from his said place of business at Newark, N. J., to purchasers in and through the various other States of the United States than the State of New Jersey.

In the course and conduct of his business respondent has been and now is in competition with individuals, partnerships and corporations offering for sale or selling hosiery in interstate commerce.

PAR. 2. It has been and is the practice of respondent to offer for sale and sell his hosiery by means of or through duly authorized salesmen who solicit orders for the hosiery and thereupon transmit the same to respondent at his said place of business. Thereafter respond-

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ent fills such orders by transporting or causing to be transported from his said place of business the hosiery of various kinds or sorts to the persons from whom the orders were obtained by his salesmen. Respondent Louis Dubinoff, in the course and conduct of the business described in paragraph 1 hereof has offered for sale and sold his hosiery through his duly authorized salesmen and solicitors, as aforesaid, by means of the following false representations and statements, to wit:

(a) That he was and is a direct mill distributor;

(b) That he owned, operated or controlled a mill or factory in which the products were made or fabricated which he sold and distributed:

(c) That the hosiery offered for sale and sold by him was and is guaranteed to be and is "run-proof."

In truth and in fact respondent Louis Dubinoff has not been, was not and is not a direct mill distributor. He has neither owned, controlled, nor operated and does not own, control or operate any mill or factory wherein the products sold and distributed by him have been or are made or fabricated. On the contrary he has purchased and continues to purchase the products sold by him from manufacturers thereof or through their agents and from jobbers and wholesalers for resale on his own account. Instead of being a direct mill distributor he has been and is a retailer of hosiery.

He has not supported or fulfilled his guaranty of the products that they are or will be "run-proof" and they have not been and are not "run-proof", as such phrase or expression is known to the trade and the purchasing public. Such understanding of the purchasing public is that a run in the stocking occurs when a thread breaks, causing the release of another thread resulting in the so-called "run", and this has been the experience of many customers who have purchased respondent's hosiery in reliance on such guaranty. The customers of respondent have at times neither received the hosiery purchased by them nor any refund of the money paid by them. Customers have returned hosiery to respondent as unsatisfactory and received no return nor refund of the money paid nor any other hosiery in its place.

PAR. 3. There are now and for more than a year last past have been individuals, partnerships and corporations offering for sale and selling in commerce among and between the various States of the United States hosiery of all kinds truthfully described by means of salesmen, solicitors, mail orders, and otherwise.

PAR. 4. The false representations of respondent described in paragraph 2 have had and have and each of them has had and has the capacity and tendency to mislead and deceive the purchasing public

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into the belief that such representations are true and into the purchase of respondent's product in reliance on such erroneous belief.

The aforesaid false representations have also had and have and each of them has had and has the capacity and tendency to divert trade to respondent from competitors mentioned in paragraph 3 hereof offering for sale or selling hosiery in interstate commerce truthfully advertised or described.

CONCLUSION

The above and foregoing practices of respondent have been and are all to the prejudice of the public and of respondent's competitors and have been and are unfair methods of competition in violation of the provisions 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 complaint of the Commission, the answer of respondent, the testimony and evidence, and the brief in support of the complaint, counsel for respondent having failed to submit brief or oral argument, and the Commission having filed its report stating 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 respondent, Louis Dubinoff, trading as Famous Pure Silk Hosiery Company, or by or under any other trade name, his agents, employees and representatives, cease and desist, directly or indirectly, in connection with offering for sale or selling hosiery in interstate commerce, from representing either orally, or by means of advertisements in magazines, newspapers, or in any other written or printed matter, or by means of radio broadcasting:

(1) That he owns, controls, or operates the mill or factory in which is manufactured the hosiery offered for sale or sold by him, unless and until he does in fact own, control, or operate such mill or factory;

(2) That he is a direct mill distributor, unless he has and maintains a distributing or agency connection with or relationship to the mill or factory in which the products sold by him are manufactured other than as a purchaser of such products from the mill or factory for resale on his own account to the consuming public;

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(3) That the hosiery offered for sale or sold by him is run-proof, or, in other words, will not "run" as the term is popularly understood;

(4) That he guarantees the hosiery offered for sale or sold by him unless or until he establishes and maintains the fixed and uniform practice of promptly refunding to purchasers of stockings from him that have run the several purchase prices paid therefor by such respective purchasers.

It is further ordered, That respondent file a report in writing within 60 days from the service of this order setting forth in detail the manner and form of its compliance therewith.

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IN THE MATTER OF

X LABORATORIES, INC.

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

Docket 2564. Complaint, Sept. 30, 1935—Order, Nov. 27, 1935

Where a corporation, engaged in the manufacture, compounding and sale of a cleaning fluid designated as "X Odorless Dry Cleaner", set forth upon the labels on the containers thereof that such cleaner was "Non-injurious to any fabric or color", and represented in advertisements, pamphlets and circulars that it would remove certain types of spots from fabrics, no matter how delicate, and leave no ring on materials upon which used, facts being that use thereof on fabrics dyed with fugitive or non-fast dyes impaired and affected the colors by causing same to bleed or run, and use thereof on certain fabrics and under certain conditions resulted in appearance of a spot or ring; with capacity to mislead purchasing public by causing it to believe that said cleaner removed grease and other spots without injury to fabrics or color and induce it to buy said product in such erroneous belief, and to divert trade to it from competitors engaged in the sale of similar cleaners:

Held, That such acts and practices were each and all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. R. L. Kennedy for the Commission.

Underwood & Kilpatrick, of Washington, D. C., 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 the X Laboratories, Inc., a corporation, hereinafter referred to as the 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 thereof would be in the public interest, hereby issues its complaint, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent 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, N. Y., and a factory in Cambridge, Mass. Respondent is now and for more than two years last past has been engaged in the manufacture, compounding and sale of a cleaning fluid, designated as "X Odorless Dry Cleaner", and, in the distribution thereof, in commerce between and among the various States of the United