

Complaint

IN THE MATTER OF

I. TEICH AND A. MAKOWER, TRADING AS TEE AND EMM
KNITTING MILLS

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

Docket 2521. Complaint, Aug. 16, 1935—Decision, June 15, 1936

Where a firm, engaged at wholesale in the sale and distribution of knitted goods—

Used a trade name containing the words "Knitting Mills" in soliciting the sale of and in selling their products, and featured said name in printed matter, together with the words "Manufacturers of worsted sweaters, bathing suits, and leather goods," notwithstanding fact that they did not knit or make products sold and distributed by them, nor own, operate, or control any mill or plant knitting or making said products;

With effect of deceiving and misleading retail merchants, their customers and prospective customers, among whom there is a preference on the part of some for dealing directly with the mill owner or manufacturer, in the impression that they can thus buy goods at a cheaper price and on more favorable terms, into the belief that the goods thus offered and sold were made by them in mills which they owned and operated or maintained and controlled, and of inducing such customers to purchase said goods from them because of such erroneous belief, and with the effect of diverting trade to them from competitors, including those who actually knit and manufacture their products for sale and distribution, and those who do not do so but truthfully advertise and do not represent themselves as knitters or manufacturers of such products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Daniel J. Murphy for the Commission.

Mr. Samuel Rabinowitz, of New York City, for respondents.

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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 I. Teich and A. Makower, a copartnership, trading as Tee and Emm Knitting Mills, hereinafter called the respondents, have been or are 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,

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hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, I. Teich and A. Makower, are copartners trading under the name and style of Tee and Emm Knitting Mills, with their principal place of business located in the city of New York in the State of New York. They are now and for more than one year last past have been engaged as a wholesaler in the sale and distribution of knitted goods in commerce between and among various States of the United States, causing the same, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York. In the course and conduct of their business, said copartners were at all times herein referred to, in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, said copartners adopted as and for their trade name the words Tee and Emm Knitting Mills, under which to carry on their business, and which trade name, containing the words "Knitting Mills," the said copartners have used in soliciting the sale of and selling their products in interstate commerce. Printed matter distributed in interstate commerce by said copartners featured the trade name "Tee and Emm Knitting Mills" and this was followed by "manufacturers of worsted sweaters, bathing suits, and leather goods"; when in truth and in fact the said copartners did not knit, make, or manufacture the products which they sold and distributed in interstate commerce; they did not own, operate, or control any mill, plant, or factory in which said products were knitted, made, or manufactured; but on the contrary filled orders with products which were knitted, made, or manufactured in a mill, plant, or factory which they neither owned, operated, nor controlled.

PAR. 3. There is a preference on the part of certain of the retail merchants in the different States of the United States for goods, wares, and merchandise to be resold by retail to the public, bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said retail merchants that by dealing directly with a mill owner or manufacturer they can buy goods at a cheaper price and on more favorable terms than they can from jobbers or corporations, associations, individuals, firms, and partnerships not knitting or manufacturing goods, wares, and merchandise which they sell to such retail dealers by eliminating the profit of the middleman. The use by the respondent copartners of

the words "Knitting Mills" in their trade name and the word "manufacturers" in their printed matter have a tendency and capacity to deceive and mislead the retail merchants, who are the customers and prospective customers of respondent copartners, by causing them to believe that respondent copartners actually knit and manufacture the products they sell to said customers and prospective customers, and that thereby such customers or prospective customers save or will save the middleman's profit, and the said respondent copartners, in the use of the words "Knitting Mills" and "manufacturers", as aforesaid, represent to customers and prospective customers that by buying from them such customers and prospective customers will eliminate and save the middleman's profit. The use by respondent copartners of the words "Knitting Mills" and "manufacturers" has a tendency and capacity to unfairly divert trade to respondent copartners from other corporations, associations, individuals, firms, and partnerships who are actually knitting and manufacturing products similar to the products of respondent copartners, for sale and distribution in interstate commerce and those competitors of respondent copartners who do not knit or manufacture similar or like products to those of respondent copartners for sale and distribution in interstate commerce, but who truthfully advertise and label same, and who do not claim and represent themselves to be knitters or manufacturers.

PAR. 4. The practices of respondent copartners, described in paragraph 2 hereof, are all to the prejudice of the public and of respondents' 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, on the 16th day of August 1935, issued and served its complaint in this proceeding upon the respondents, I. Teich and A. Makower, copartners, trading as Tee and Emm Knitting Mills, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, testimony and evidence in support of the allegations of said complaint were introduced by Daniel J. Murphy, attorney for the Commission, before John J.

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Keenan, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Samuel Rabinowitz, attorney for the respondent, and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter the proceedings regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, and brief in support of the complaint; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, I. Teich and A. Makower, copartners, trading under the name and style of Tee and Emm Knitting Mills, have their principal place of business located in the city of New York, in the State of New York. They are now, and for more than one year last past have been engaged as a wholesaler in the sale and distribution of knitted goods in commerce between and among the various States of the United States. They cause said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York.

PAR. 2. In the course and conduct of their business, said copartners were at all times herein referred to in competition with other corporations, firms, associations, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 3. In the course and conduct of their said business, respondents adopted as, and for their trade name the words "Tee and Emm Knitting Mills," under which to carry on their business. Said copartners have used said trade name, containing the words "Knitting Mills," in soliciting the sale of, and selling, their products in interstate commerce. Printed matter distributed in interstate commerce by said copartners featured the trade name "Tee and Emm Knitting Mills," and this was followed by "Manufacturers of worsted sweaters, bathing suits, and leather goods." In truth and in fact, the said copartners did not knit, make, or manufacture the products which were sold and distributed in interstate commerce by them; nor did they own, operate, or control any mill, plant, or factory in which said products were knitted, made, or manufactured.

PAR. 4. There is a preference on the part of certain retail merchants of goods, wares, and merchandise, to deal directly with the mill owner or manufacturer thereof. There is an impression and belief existing among certain of said retail merchants that they can

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buy goods at a cheaper price and on more favorable terms by dealing directly with a mill owner or manufacturer. The use by the respondent copartners of the words "Knitting Mills" in their trade name, and the word "Manufacturers" on their printed matter, as aforesaid, has a tendency and capacity to deceive and mislead, and the same has deceived and misled, and does deceive and mislead, said retail merchants, customers, and prospective customers of respondent copartners into the belief that said goods so offered for sale, and sold, by respondent copartners are manufactured by them in mills which they own and operate, or maintain and control. The use by respondent copartners of the words "Knitting Mills" and "Manufacturers" has induced, and does induce, customers and prospective customers to purchase said goods from respondent copartners, because of the erroneous belief thereby engendered, and by such means trade has been and is, diverted to respondent copartners from its competitors, to the substantial injury of said competitors who are actually knitting and manufacturing for sale and distribution in interstate commerce products similar to the products of respondent copartners, and also from those competitors of respondent copartners who do not knit or manufacture, but who truthfully advertise and do not represent themselves to be knitters or manufacturers of similar or like products to those of respondent copartners.

CONCLUSION

The aforesaid acts and practices of respondent copartners under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and to competitors of respondent copartners, and their unfair methods of competition in commerce 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 complaint of the Commission, and the testimony and evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the charges of such complaint and in opposition thereto, and brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of an Act of Congress, approved Sep-

tember 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 respondents, I. Teich and A. Makower, copartners, trading as Tee and Emm Knitting Mills, their agents, representatives, and employees, in connection with the offering for sale and sale of knitted goods in interstate commerce forthwith cease and desist from:

Representing, through their trade name and letterheads, statements, labels, invoices, and through other printed matter, or in any other manner by the use of the words "Knitting Mills" or "Mills" or "Manufacturers," and by the use of any other word or words of similar import and meaning, that respondents own, operate, or control a mill or factory in which their said products are knitted or manufactured.

It is further ordered, That within 60 days after service of this order upon said respondent copartners, they shall file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with.

Syllabus

IN THE MATTER OF
K-W GRAPHITE CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2684. Complaint, Jan. 10, 1936—Decision, June 15, 1936*

Where a corporation engaged in the business of compounding an oil containing an admixture of colloidal graphite and in the sale and distribution thereof for addition to fuels and crank-case oils for combustion engines and machinery—

Represented through advertisements in newspapers and periodicals, in circular letters and otherwise and upon the face of the containers of its said products that it reduced friction as much as 25 to 30 percent, that only one oil change in each 3,000 miles was necessary when it was used, it lowered oil bills 50 percent, enabled a saving of from 8 percent to 12 percent in gasoline and increased motor life and efficiency 40 percent;

Facts being that while said product had merit and was especially valuable in reducing friction and in the building up of a graphoid surface which would stand extreme heat for short periods of time without injury to the metal, aforesaid representations as to the relative value and efficiency of said preparation were grossly exaggerated and misleading and it would not increase motor life and efficiency by any stated percentage or to a substantial percentage nor similarly reduce gas consumption or friction nor enable an automobile to run 3,000 miles or any stated mileage on one oil change, or effect any definite saving on oil bills;

With tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous belief that such statements and representations were true and of inducing members of the public to purchase such product on account of such erroneous belief and with effect of placing in the hands of its dealers and distributors an instrument through which they might mislead and deceive the purchasing public and of unfairly diverting trade to it from competitors, among whom there are manufacturers or compounders and distributors of lubricating oils and similar products who do not misrepresent the same and falsely claim therefor such merits and such capacity to achieve results; to the damage and injury of distributors and the public and to the substantial injury of competition in interstate commerce:

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. Joseph C. Fehr for the Commission.

Mr. Charles P. Woodbury, of Kansas City, Mo., 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,