

Complaint

IN THE MATTER OF

ROSS KNITTING MILLS, INC., TRADING IN ITS SAID
CORPORATE NAME AND AS ROSS SPORTWEAR CO.,
AND NATHAN HIRSCH, TRADING AS ROSS SPORT-
WEAR CO.

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

Docket 2671. Complaint, Dec. 27, 1935—Decision, July 15, 1936

Where a corporation engaged in the sale and distribution of knitted garments and other wearing apparel, and its similarly engaged president, used on their letterheads, business cards, invoices, and in other ways in soliciting sale of and selling their aforesaid goods, words "Manufacturers of Sweaters, Dresses, Suits, and Skirts," and abbreviation and words "Manfrs. of Knitted Suits, Sweaters, and Skirts," and other words and representations of similar effect, notwithstanding fact they did not knit, make, or manufacture products sold or distributed in commerce by them, own, operate, or control any mill, plant, or factory knitting or making the same, and preference of certain retail merchants of knitted garments and other wearing apparel for dealing directly with mill owner and manufacturer, and their impression and belief that they can buy more cheaply and eliminate middleman's profits by so dealing;

With tendency and capacity to mislead and deceive many of their customers and prospective customers into the erroneous belief that they owned, operated, or controlled a mill, etc., making said products, and into erroneous belief that those buying said garments sold by them were purchasing same directly from the manufacturers thereof and were thereby eliminating profits of middlemen and obtaining various other advantages not to be had by purchasing goods of other than the manufacturer, and with tendency unfairly to divert business from and otherwise injure and prejudice competitors making the garments sold by them and rightfully representing themselves manufacturers thereof, and competitors purchasing said articles in which they deal and who do not thus misrepresent themselves:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. Astor Hogg 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

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Federal Trade Commission, having reason to believe that Ross Knitting Mills, Inc., a corporation, trading in its said corporate name and as Ross Sportwear Company, and Nathan Hirsch, trading as Ross Sportwear Co., hereinafter referred to as the respondents, have been and 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 to the interest of the public, the said Federal Trade Commission hereby issues its complaint against the respondents and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Ross Knitting Mills, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business in the city of New York in the State of New York; that said Ross Knitting Mills, Inc., trades under its said corporate name and under the name and style of Ross Sportwear Co.; and that respondent Nathan Hirsch, who is president of said Ross Knitting Mills, Inc., is an individual trading under the said name and style of Ross Sportwear Co. That said respondents are and have been for more than 1 year last past engaged in selling and distributing knitted garments and other apparel to purchasers located in a State or States other than the State of New York, and pursuant to such sales and as a part thereof, cause and have caused said knitted garments and other apparel so sold to be transported from their place of business in the State of New York into and through States other than the State of New York to said purchasers in the State or States in which they are located.

PAR. 2. That during all of the said time stated in paragraph 1 hereof there have been and now are other persons, firms, and corporations engaged in the business of selling knitted garments and other apparel similar to those sold by respondents, and, pursuant to such sales and as a part thereof, cause and have caused such commodities to be shipped to customers located in States other than the States of origin of such shipments, and with such other persons, firms, and corporations the respondents have been and are in substantial competition.

PAR. 3. That the said respondent, Ross Knitting Mills, Inc., formerly sold and distributed knitted garments and other apparel to its customers under its said corporate name, and still uses said corporate name in its dealings with mills from which it purchases its products. That respondent Ross Knitting Mills, Inc., and the respondent Nathan Hirsch have used during the time set forth in paragraph 1 hereof, and now use, in the sale and distribution of such knitted garments and other apparel the name "Ross Sportwear Company."

PAR. 4. That the said respondents, Ross Knitting Mills, Inc., and Nathan Hirsch, trading under the said name and style of Ross Sportwear Co., in the course and conduct of their business as described in paragraph 1 hereof, have used and now use on their letterheads, business cards, invoices, and otherwise, in soliciting the sale of and selling their goods as aforesaid the words "Manufacturers of Sweaters, Dresses, Suits and Skirts," the abbreviation and words "Manfrs. of Knitted Suits, Sweaters and Skirts" and other words and representations to similar effect; that, in truth and in fact, the said respondents have not manufactured and do not manufacture the products so sold by them; and that the said respondents have not controlled and do not control the mill or mills or factory or factories in which the products sold by them are manufactured, but, on the contrary, fill their orders with products which are manufactured in a mill or factory or mills or factories which they neither own, operate, nor control.

PAR. 5. That the use by the respondents of the words and abbreviations "Manufacturers of" and "Manfrs. of" and other similar words and representations as aforesaid has the capacity to mislead and deceive and does mislead and deceive many of respondents' customers and prospective customers into the erroneous belief that respondents operate or control a mill or factory or mills or factories in which the products sold by respondents as aforesaid are manufactured and that persons, firms, and corporations buying said garments sold by respondents are buying said garments directly from the manufacturers thereof, thereby eliminating the profits of middlemen and obtaining various other advantages not to be obtained by purchasing goods from middlemen.

PAR. 6. That there are among the competitors of respondents referred to in paragraph 2 hereof many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof; that there are others of said competitors who purchase the garments in which they deal and resell same and who do not represent that they manufacture said garments; and that the aforesaid acts and practices of the respondents in representing that they own or operate mills or factories in which the products sold by them are manufactured tend to divert and do divert business from and otherwise injure and prejudice said competitors.

PAR. 7. That the aforesaid acts and things done by the respondents are all to the injury and prejudice of the public and the competitors of respondents in interstate commerce within the intent and meaning of Section 5 of the said Act of Congress hereinabove entitled.

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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 27th day of December 1935, issued and served its complaint in this proceeding upon the respondents, Ross Knitting Mills, Inc., a corporation and trading as Ross Sportwear Co., and Nathan Hirsch, an individual, trading as Ross Sportwear Co., 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 (respondents did not file answer), testimony and evidence in support of the allegations of said complaint were introduced by Astor Hogg, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Nathan Hirsch, President of Ross Knitting Mills, Inc., a corporation, and trading as Ross Sportwear Co.; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding came on for final hearing before the Commission on the said complaint, testimony and evidence, and brief in support of the complaint (respondents did not file brief), and the Commission, having duly considered the same and being 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. Respondent Ross Knitting Mills, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business in the city of New York in said State. It trades under its said corporate name and under the name and style of Ross Sportwear Co.

Respondent Nathan Hirsch is president of the respondent Ross Knitting Mills, Inc., and also trades as an individual under the name and style of Ross Sportwear Co., having his principal place of business at New York, N. Y.

For more than 1 year last past respondents have been engaged in the sale and distribution of knitted garments and other wearing apparel in commerce between and among the various States of the United States, causing said products when sold by them to be shipped from their places of business in the State of New York to purchasers thereof located in States other than the State of New York.

In the course and conduct of their said business respondents have been at all times herein mentioned in substantial competition with

other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of knitted garments and other wearing apparel.

PAR. 2. Respondent Ross Knitting Mills, Inc., formerly sold and distributed knitted garments and other wearing apparel to customers under its said corporate name, and used said corporate name in its dealings with mills from which it purchases its products.

Respondents Ross Knitting Mills, Inc., and Nathan Hirsch, trading as Ross Sportwear Co., in the course and conduct of their business have used on their letterheads, business cards, invoices, and in other ways, in soliciting the sale of and selling their goods as aforesaid, the words "Manufacturers of Sweaters, Dresses, Suits, and Skirts," the abbreviation and words "Manfrs. of Knitted Suits, Sweaters, and Skirts," and other words and representations of a similar effect.

PAR. 3. In truth and in fact respondents did not and do not knit, make, or manufacture the products which were sold and distributed in interstate commerce by them; nor did they or do they own, operate, or control any mill, plant, or factory in which said products were or are knitted, made, or manufactured.

PAR. 4. There is a preference on the part of certain retail merchants of knitted garments and other wearing apparel to deal directly with the mill owner and manufacturer thereof. There is an impression and belief existing among certain of said retail merchants that they can buy goods at a cheaper price and that they can eliminate middlemen's profits by dealing directly with the mill owner or manufacturer.

The use by respondents of the word "Manufacturers" and the abbreviation "Manfrs." as aforesaid, has and has had the capacity and tendency to mislead and deceive many of respondents' customers and prospective customers into the erroneous belief that respondents own, operate, or control a mill or factory, or mills or factories, in which the products sold by the respondents as aforesaid are manufactured, and into the erroneous belief that persons, firms, partnerships, and corporations buying said garments sold by respondents are buying said garments directly from the manufacturers thereof, and are thereby eliminating profits of middlemen and obtaining various other advantages not to be obtained by purchasing goods from others than manufacturers.

PAR. 5. There are among the competitors of respondents, referred to in paragraph 1 hereof, many who manufacture the garments which they sell and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the garments in which they deal and resell the same and who do not represent that they manufacture said garments.

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The aforesaid acts and practices of the respondents, in which they represent that they own, operate, or control mills or factories in which the products sold by them are manufactured, tend to unfairly divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The aforesaid acts and practices of respondents under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and to competitors of respondents, and constitute unfair methods of competition in commerce, and are in violation 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 before the Federal Trade Commission upon the complaint of the Commission and the testimony and evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and brief filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 ordered, That respondents, Ross Knitting Mills, Inc., trading under its said corporate name and as Ross Sportwear Company, or trading under any other name or names, and Nathan Hirsch, trading as Ross Sportwear Company, or trading under any other name or names, their officers, directors, agents, representatives, servants, and employees, in connection with the offering for sale, sale, or distribution in interstate commerce of knitted wear or other wearing apparel, hereby cease and desist from:

Representing through their trade names, letterheads, business cards, invoices, labels, or in any other manner, 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 respondents 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
EDISON-BELL COMPANY, INC., ET AL.

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

Docket 2223. Complaint, May 16, 1935¹—Decision, July 17, 1936

Where the names, letter combinations, and symbols "Edison," "Bell," representation of a bell and name "Blue-bell," "Marconi," "Victor," "Brunswick," "Majestic," "R. C. A.," "E. B.," and "G. E.," and same letters written in script in a circle, with scroll-like interior decoration, had come to have a peculiar meaning in the radio world and among dealers and the buying public and in foreign countries, and to convey to the public mind a significance distinct from other names employed in such trade or world as meaning the radio and other products of certain well-known concerns, and to be associated with certain famous inventors in the field of sound transmission and with their successors in interest, and the value of said products, thus identified by said names, combinations, and symbols, made and sold by said concerns and interests, had come to amount to millions of dollars annually, and said names, etc., as those of well-known and long-established individuals, companies, and corporations, used as such and as standard brands, marks, and symbols on radio sets, tubes, etc., had come to have a fixed and stable value generally throughout the United States and foreign countries, and to be relied upon by the purchasing public as indicating high standard, reliable, and genuine products, and use thereof influenced purchase of said products and increased sales, and said names, etc., as attached to such standard brand products, had come to have value to the thousands of dealers therein, in addition to their value to the owners and users thereof in commerce; and thereafter,

Certain individuals, former partners, and various corporations organized and controlled by them and their families and operated as a single business, engaged in the manufacture and sale of radio receiving sets, tubes, and parts, made or assembled at various places, and in the sale of both standard makes and spurious and relatively cheap and different "gyp" makes in simulation of the former in their design, mark, and brand, and who operated unsuccessfully under many different company, corporate, trade, and brand names prior to adoption and use of name "Edison-Bell," and whose practice it was to substitute in standard brand radio sets their so-called "Edison-Bell," for standard tubes originally installed therein, and to advertise and sell such products, thus marked, under said name and letters "E. B." and representation of a bell—

- (a) Adopted and used, without right and without permission of the owners of said names, letters, and symbols, as corporate, partnership, and trade names, and as marks, brands, and designations for their aforesaid sets, tubes, and other products, names, etc., which closely resembled, in size, typo-

¹ Amended and supplemental.