

Syllabus

IN THE MATTER OF

M. BERGER AND A. BERGER, TRADING AS WEARWELL
KNITTING MILLSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914*Docket 2670. Complaint, Dec. 26, 1935—Decision, Nov. 10, 1936*

Where partners engaged in sale and distribution of knitted goods, substantially all of which products were made in factories or mills owned by others, from yarn furnished by said firm, on a contract basis and at a specified price, and in which factories said firm owned no interest and over which they had no control of any nature—

Adopted and used a trade name including words "Knitting Mills" in connection with sale of their products, and made use of same on letterheads, order blanks, and otherwise, in soliciting sale of and selling such products;

Notwithstanding the fact that not more than 5 percent of the total amount of goods sold by them was made on a machine at their place of business and used solely for manufacture of heavy sweaters during the fall season, and remainder of goods which they sold was made for them by others, as hereinbefore set forth;

With capacity and tendency to mislead and deceive many of their customers and prospective customers into the erroneous belief that they owned, operated, or controlled a mill or factory in which their said products were made, and into the erroneous belief that persons and concerns buying their said garments were purchasing same directly from the manufacturer, as preferred by certain retailers as cheaper and as eliminating middleman's profit through dealing directly with mill owner or manufacturer, and as providing various other advantages not to be had by buying from others, and with effect of unfairly diverting business from and otherwise injuring and prejudicing their competitors, including those who make their garments and rightfully represent themselves as manufacturers thereof, and those who purchase such products dealt in by them and do not represent themselves as manufacturers thereof; to the substantial injury of competition:

Held, That such acts and practices 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 Federal Trade Commission, having reason to believe that M. Berger and A. Berger, copartners trading and doing business under the name and style of Wearwell Knitting Mills, hereinafter referred to

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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 the said Federal Trade 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 respondents, M. Berger and A. Berger, are copartners trading under the name and style of Wearwell Knitting Mills with their principal place of business located in the city of New York in the State of New York. That said respondents are and have been for several years last past engaged in selling 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 said time stated in paragraph 1 hereof, there have been and now are other persons, firms, and corporations engaged in the business of manufacturing and selling knitted garments and other apparel similar to those sold by respondents and pursuant to such sales and as a part thereof have caused such commodities to be shipped to customers located in States other than the State of origin of such shipments, and with such other persons, firms, and corporations, respondents have been and are in substantial competition.

PAR. 3. That the said respondents, M. Berger and A. Berger, in the course and conduct of their business as described in paragraph 1 hereof, adopted as and for their trade name the words "Wearwell Knitting Mills," which trade name containing the words "Knitting Mills," the said respondents use and have used on their invoices, letterheads, labels, and otherwise in soliciting the sale of and selling their goods in interstate commerce as aforesaid; that in addition to the said trade name "Wearwell Knitting Mills" the respondents' said invoices and letterheads contain the words "Manufacturers of High Grade Sweaters, Bathing Suits and Knitted Novelties" 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 said respondents have not owned or controlled and do not own or control the mill or mills or factory or factories in which the products sold by them are knitted or manufactured, but, on the contrary, fill their orders with products

which are knitted or manufactured in a mill or factory or in mills or factories which they neither own, operate, nor control, with the exception that the respondents operate only during a few months of each year one small knitting machine in the rear of their store on which are knitted a few sweaters of a certain type which constitute only a negligible percentage of the knitted goods sold by respondents as aforesaid.

PAR. 4. That the use by the respondents of the words "Knitting Mills" in their trade name as aforesaid and the words "Manufacturers of High Grade Sweaters, Bathing Suits and Knitted Novelties" on their invoices and letterheads and otherwise has the capacity and tendency to mislead and deceive and does mislead and deceive many of the respondents' customers and prospective customers into the erroneous belief that the respondents operate or control a mill or mills in which the products sold by respondents as aforesaid are manufactured and that persons buying garments and other apparel sold by respondents are buying same directly from the mills and from the manufacturers thereof, thereby eliminating profits of middlemen and obtaining various other advantages not to be obtained by persons purchasing goods from middlemen.

PAR. 5. 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 in no wise represent that they manufacture said garments; and that the aforesaid acts and practices of the respondents in representing that they own or operate mills 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. 6. 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.

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 26th day of December 1935, issued and served its complaint in this proceeding upon the respondent, M. Berger and A. Berger, partners, trading as Wearwell Knitting Mills,

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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 (neither of said respondents filed answer) testimony and other 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 opposition to the allegations of the complaint by M. Berger, one of the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief in support of the complaint (respondents did not file brief) and the Commission having duly considered the same and being now 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. Respondents M. Berger and A. Berger are partners trading and doing business as Wearwell Knitting Mills with their principal place of business located in the city of New York, State of New York. They are now and have been continuously since the year 1923 engaged in the sale and distribution of similar products in commerce between and among the various States of the United States. They have caused and now cause their said products when sold by them to be transported from their place of business in New York, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. They are now and have been at all times hereinafter mentioned in substantial competition with other partnerships and with individuals, firms, and corporations engaged in the sale and distribution of similar products in commerce between and among the various States of the United States.

PAR. 2. In the year 1923 respondents adopted and, at all times hereinafter mentioned, have used and now use as and for their trade name the words "Wearwell Knitting Mills" in connection with the offering for sale and sale of their products in commerce among and between the various States of the United States, and have caused and cause their said trade name to be used on their letterheads, order blanks, and otherwise in soliciting the sale of and selling their said products in interstate commerce. In and by their trade name through the use of the word "Knitting" and of the word "Mills" respondents represent that they own, operate, and control a mill and that the products sold by them are and were manufactured by them.

Substantially all of the products sold by respondents are and were manufactured in factories or mills owned by others and such products are and were made from yarn furnished by respondents and are and were made for respondents on a contract basis at a specified price per dozen. Those making said products for respondents have had and still have complete supervision and control over their own factories and respondents do not have and did not have any control of any nature over said factories nor do they own any interest in such factories.

Respondents have at their place of business in New York one knitting machine which they use for the sole purpose of manufacturing heavy sweaters during the fall season. Such machine is not in use for more than two months during any part of the year. As a matter of fact respondents' output on their own machine does not and did not amount to more than 5 percent of the total amount of the goods sold by them. The remainder of the goods sold by them were manufactured for them by others as hereinbefore set out.

PAR. 3. 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 said retail merchants that they can buy goods at a cheaper price and that they can eliminate a middleman's profit by dealing directly with the mill owner or manufacturer. The use by the respondents of the words "Knitting" and "Mills" in their trade name has had and has the capacity and tendency to mislead and deceive many of the respondents' customers and prospective customers into the erroneous belief that the 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 said respondents are buying said garments directly from the manufacturer thereof and are thereby eliminating profits of the middlemen and obtaining various other advantages not to be obtained by purchasing goods from others than manufacturers.

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 respondents' competitors; thereby respondents do substantial injury to competition in interstate commerce.

PAR. 4. There are among the competitors of respondents referred to in paragraph 1 hereof many who manufacture the garments which

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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.

CONCLUSION

The aforesaid acts and practices of the respondents M. Berger and A. Berger, partners, trading as Wearwell Knitting Mills are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning 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, testimony and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief of the Commission filed herein (respondents having filed no brief and oral arguments having been waived) 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 M. Berger and A. Berger, partners, trading under the name and style of Wearwell Knitting Mills, or trading under any other name, their agents, representatives, and employees, in connection with the offering for sale, sale, or distribution of knitted goods in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the words "Knitting" or "Mills" alone or in conjunction with any other word or words in their trade name, or in any other manner whatsoever, that they 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 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

CHESAPEAKE DISTILLING & DISTRIBUTING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3 OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2319. Complaint, Mar. 7, 1935—Decision, Nov. 11, 1936

Where a corporation engaged in the rectifying and bottling of distilled spirits purchased by it from distillers, and with no stills or other apparatus for the production of distilled spirits by original and continuous distillation from mash, wort, or wash, as long understood from word in trade, in competition with those engaged in manufacture by distillation of whiskies, brandies, and other spirituous beverages, and in sale thereof, and with rectifiers, wholesalers, and jobbers—

Represented, through use of word "distilling" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its products, to wholesale customers, and furnished them with means of similarly representing to their retail dealer vendees and ultimate purchasers, that the whiskies, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation; notwithstanding fact it was not a distiller and did not distill said whiskies or other spirituous liquors thus bottled, sold, and transported by it;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into the belief that in purchasing the same they were buying a product bottled at a distillery by the original distiller thereof, as substantially preferred by the trade and public, and with the effect of unfairly diverting trade to it from its competitors, including those who manufacture spirituous liquors by process of original and continuous distillation, as above set forth, and truthfully designate themselves as distilling companies, and those who, engaged solely as rectifiers, do not untruthfully designate themselves as "distillers" or "distilling companies":

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

Before *Mr. John W. Bennett*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Nash & Donnelly, 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 Chesapeake Distilling & Distributing Company, a corporation, has been or is using unfair methods of competition in commerce, as "commerce" is defined

¹ Count 2 of the complaint, under National Industrial Recovery Act, dismissed.