

Complaint

IN THE MATTER OF
MAY HOSIERY MILLS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3172. Complaint, July 15, 1937—Decision, Sept. 9, 1937*

Where a corporation engaged in manufacture, sale, and distribution of textile products, including hosiery for men and women, in substantial competition with others engaged in manufacture, sale, and distribution of like and similar products in commerce among the various States and in the District of Columbia—

Made use of such statements and representations as "Pure Thread Silk and Rayon," "Creptone with Silk Wrap," and "Genuine Wrap Pure Thread Silk and Rayon," with words "and Rayon" on a separate line and in small capital letters, as contrasted with preceding words in large conspicuous capital letters, in the advertisements of its said commodities in trade papers, price lists, etc., and on transfers appearing on the merchandise in question, and led purchasers and prospective purchasers into mistaken and erroneous belief that commodities involved were made largely from materials entirely different from those contained therein, and contained finer materials of manufacture than actually was the case, and that silk was major material used in merchandise made and sold by it, facts being hosiery designated as aforesaid was not made entirely of silk of the silk-worm, and silk was not major component of hosiery upon which transfers bearing such legends, as above set forth, appeared, but silk used in such instances varied from infinitesimal proportions in such "Creptone" brand product to far less than major proportion in the other two;

With tendency and capacity to lead distributors and purchasing public into belief that said statements and representations were true, and with result of inducing members of public to purchase its said products on account of such erroneous beliefs, to resultant damage and injury of manufacturers and distributors, and to injury of general public, and of unfairly diverting trade to it from competitors; to the substantial injury of competition in commerce:

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

Mr. S. Brogdyne Teu II 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 May Hosiery Mills, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof

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would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, May Hosiery Mills, Inc., is a North Carolina corporation, having its principal office and place of business in the city of Burlington, State of North Carolina. It has been for more than one year last past, and still is, engaged in the manufacture, sale, and distribution of hosiery to jobbers and retail dealers. In the course and conduct of its business it offers said products for sale and sells the same in commerce between the State of North Carolina and the several States of the United States and the District of Columbia.

PAR. 2. When said products are sold, respondent transports or causes the same to be transported from its place of business in the State of North Carolina to purchasers thereof located in the various States of the United States and in the District of Columbia.

There has been for more than one year last past, and there still is, a constant current of trade and commerce in said products so sold by respondent between and among the various States of the United States and in the District of Columbia.

Respondent is now and for more than one year last past has been engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in soliciting the sale, and in the selling of its commodities and for the purpose of creating a demand upon the part of the consuming public for said commodities, has advertised its commodities through the media of advertisements inserted in trade papers, price lists, and other printed matter published and circulated through the United States mails to its customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 4. Representative of such statements and representations above referred to and made by respondent on the articles of merchandise manufactured and sold by it are the following:

1. PURE THREAD SILK AND RAYON

The first three words of the quoted statement are in large conspicuous capital letters making up a single line. The last two words of this phrase, "and Rayon," are in a line below the above three words and appear in small inconspicuous capital letters.

2. Creptone with Silk Wrap

3. GENUINE WRAP PURE THREAD SILK AND RAYON

The words "Genuine Wrap Pure Thread Silk" appear in large conspicuous capital letters, while the words "and Rayon" appear on another line underneath in small capital letters.

PAR. 5. In the aforesaid ways and by the aforesaid means respondent makes and has made to the general public false and misleading statements with reference to the commodities offered for sale by it. Many articles and items of merchandise described in the said advertisements, price lists, and other printed matter above referred to, and on transfers appearing on the merchandise, are so described and made up as to mislead purchasers and prospective purchasers into the mistaken and erroneous belief that the said commodities are made largely from materials entirely different from that contained in the merchandise, and to mislead and deceive said purchasers and prospective purchasers into the mistaken and erroneous belief that the said merchandise contains finer materials of manufacture than the articles of merchandise actually contain.

PAR. 6. The use by the respondent of the words "Pure Thread Silk" and others of like import used in conjunction with the words "and Rayon" appearing anteriorly to the words "and Rayon," and being composed of large capital letters, while the words "and Rayon" appear in small capital letters about one-half the size of the letters in the preceding line in a separate line below, serves to lead purchasers and prospective purchasers into the erroneous and mistaken belief that silk is the major material used in the manufacture of the merchandise made and sold by the respondent.

PAR. 7. Likewise, by the use of the phrase "Silk Wrap" in conjunction with the words "Creptone with," said purchasing and consuming public is led into the mistaken and erroneous belief that the major component of the hosiery whereon this descriptive phrase is used is silk.

PAR. 8. In truth and in fact, in each and every instance cited above, and in other instances, the silk used in the manufacture of respondent's merchandise varies from an infinitesimal proportion in the hosiery branded and sold as "Creptone with Silk Wrap" to far less than a major proportion used in the hosiery manufactured and sold under the brand name of "Pure Thread Silk and Rayon."

PAR. 9. The aforesaid false and misleading advertising, branding, and representations on the part of the respondent place in the hands of retailers buying for resale an instrument and means whereby said retailers may commit and do commit a fraud upon a substantial portion of the consuming public by enabling such retailers to represent and offer for sale and sell respondent's hosiery as being a

genuinely superior product made from all silk or a majority of silk material.

PAR. 10. There are among the competitors of the respondent in commerce as described in paragraph 1 above manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products.

There are also among the competitors of respondent manufacturers and distributors of like and similar products who refrain from advertising or representing, through their advertisements, price lists, or other advertising media, and brand marks on their products, that the merchandise offered for sale by them has a merit and value that it does not have, or that it was manufactured from material other than actually contained in said merchandise.

PAR. 11. The effect of the foregoing false and misleading representations and acts of respondent in selling and offering for sale such items of merchandise as hereinbefore referred to is to mislead a substantial portion of the purchasing and consuming public in the several States of the United States by inducing them to believe:

1. That the various items of hosiery described in respondent's advertisements, price lists, and other advertising media, and brand marks on said merchandise, were and are manufactured for the most part from silk;

2. That the said products, because of the representations made thereon, are composed of superior materials, and that therefore the purchasers thereof are buying a superior product.

PAR. 12. The foregoing false and misleading statements and representations on the part of the respondent have induced and still induce a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by respondent on account of the aforesaid mistaken and erroneous beliefs.

As a result thereof trade has been diverted from those competitors of respondent engaged in similar businesses referred to in paragraph 10 above. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 13. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 15, 1937 issued, and on July 16, 1937 served, its complaint in this proceeding upon respondent May Hosiery Mills, Inc., a corporation, charging it with use of unfair methods of competition in commerce in violation to the provisions of said act. On August 16, 1937 the respondent filed its answer, in which answer it admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint in that, without further evidence or intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violation of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto; 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, May Hosiery Mills, Inc., is a corporation organized and doing business under the laws of the State of North Carolina.

PAR. 2. The respondent has been for more than one year last past engaged in the manufacture, sale, and distribution of a variety of textile products, among them hosiery for both men and women.

PAR. 3. In the sale of said products respondent has transported or caused the same to be transported from its principal place of business in the State of North Carolina to purchasers thereof located in States of the United States other than the State from which the shipment originated, and in the District of Columbia.

The respondent is engaged in substantial competition with individuals, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of like and similar products, and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale, and in the selling, of its commodities, and for the purpose of creating a demand upon

the part of the consuming public for said commodities, has advertised its commodities through the media of advertisements, inserted in trade papers, price lists, and other printed matter, published and circulated through the United States mails to its customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 5. Representative of such statements and representations referred to in paragraph 4 and made by respondent on the articles of merchandise manufactured and sold by it are the following:

1. PURE THREAD SILK AND RAYON

The first three words of the quoted statement are in large conspicuous capital letters making up a single line. The last two words of the phrase, "and Rayon," are in a line below the above three words and appear in small inconspicuous capital letters.

2. Creptone with silk Wrap

3. GENUINE WRAP PURE THREAD SILK AND RAYON

The words "Genuine Wrap Pure Thread Silk" appear in large conspicuous capital letters, while the words "and Rayon" appear on another line underneath in small capital letters.

PAR. 6. In the aforesaid ways and by the aforesaid means respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by it. Many articles and items of merchandise described in its advertisements, price lists, and other printed matter, and herein referred to, and on transfers appearing on the merchandise are so described and made up as to lead purchasers and prospective purchasers into the mistaken and erroneous belief that the said commodities are made largely from materials entirely different from that contained in the merchandise, and to lead purchasers and prospective purchasers into the mistaken and erroneous belief that the said merchandise contains finer materials of manufacture than the articles of merchandise actually contain.

PAR. 7. The use by the respondent of the words "Pure Thread Silk" and others of like import in conjunction with the words "and Rayon," and appearing anteriorly to the words "and Rayon," and being composed of large capital letters, and the words "and Rayon" appearing in small capital letters about one-half the size of the letters in the preceding line in a separate line below, serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that silk is the major material used in the manufacture of the merchandise made and sold by the respondent.

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PAR. 8. The hosiery of the respondent on which appear the phrases heretofore set out in paragraph 5 above is not made entirely of the silk of the silkworm.

By the use of the phrases "Pure Thread Silk and Rayon," "Creptone with Silk Wrap," "Genuine Wrap Pure Thread Silk and Rayon," in the manner herein set out in paragraph 5 the purchasing and consuming public is led into the erroneous and mistaken belief that the major component of the hosiery whereupon these transfers appear is silk.

PAR. 9. In fact, in each and every instance cited in paragraphs 5, 6, and 7 above, and in other instances, the silk used in the manufacture of respondent's merchandise varies from an infinitesimal proportion in the hosiery branded and sold as "Creptone with Silk Wrap" to far less than a major proportion used in the hosiery manufactured and sold under the brand names of "Pure Thread Silk and Rayon" and "Genuine Wrap Pure Thread Silk and Rayon."

PAR. 10. The use of each and all of the foregoing false and misleading statements and representations by the respondent as herein set out has had, and now has, a tendency and capacity to lead distributors and the purchasing public into the belief that said statements and representations are true, and has induced and now induces members of the public to purchase the products of said respondent on account of such erroneous beliefs, to the resultant damage and injury of manufacturers and distributors, and to the injury of the general public. Said representations have thereby unfairly diverted trade to said respondent from competitors, and substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent May Hosiery Mills, Inc. are to the prejudice of the public and of respondent's 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 and the answer of respondent in which answer respondent admits all the material

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allegations of the complaint to be true, and states that it waives hearing on the charges set forth in the said complaint, and that, without further evidence or other intervening procedure, the Commission may issue and serve upon it its findings as to the facts and conclusion and an order to cease and desist from the violation of law charged in the complaint, 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 ordered, That the respondent, May Hosiery Mills, Inc., its officers, agents, representatives, and employes, in connection with the offering for sale, sale, and distribution of hosiery in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Using the word "silk" to designate and describe the material from which said hosiery is made, until and unless such material is composed entirely of silk, the product of the cocoon of the silk worm, or unless such material contains a substantial percentage of silk, the product of the cocoon of the silk worm, and the word "silk" is accompanied by a word or words, in equally conspicuous type and in close conjunction therewith, aptly and truthfully naming and describing such other yarn or yarns.

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

Syllabus

IN THE MATTER OF

HEIDELBERGER CONFECTIONERY COMPANY

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

Docket 1772. Complaint, Aug. 25, 1937¹—Decision, Sept. 10, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve, or which were designed to, or might, involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which included assortments composed of (1) number of one-pound boxes of candy, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser pushing by chance number concealed under card's perforated disk paid for box of candy in accordance with such number pushed by chance; (2) number of penny chocolate covered candies of uniform size and shape, together with number of larger pieces and other articles of merchandise, to be given as prizes to purchasers of said pieces of uniform size, etc., selecting by chance one of a small number of said pieces, colored centers of which differed from those of the majority; and of (3) similar assortment, but without larger pieces or other merchandise, of uniform pieces, majority, but not all, of which had centers of same color, through which dealers were enabled to select from their stock other pieces for sale and distribution along with aforesaid assortment as a lottery or game of chance—

Sold, to wholesalers and retailers for display and resale to purchasing public in accordance with aforesaid sales plans, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products, in accordance with aforesaid plans, enabling purchasing public, through game of chance, to procure said boxes at varying prices, or to procure larger pieces or other articles of merchandise, contrary to public policy long recognized by the common law and criminal statutes, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said products in preference to candy offered and sold by its competitors and with result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not

¹ Amended and supplemental complaint herewith followed the vacating on August 24, 1937 of the original findings and order which issued on April 3, 1934 (18 F. T. C. 281).