

Syllabus

IN THE MATTER OF

ALFRED BOEHM, DOING BUSINESS AS LYNX KNITTING
COMPANY

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

Docket 3286. Complaint, Dec. 22, 1937—Decision, Apr. 13, 1938

Where an individual engaged in sale and distribution of hosiery through house-to-house canvassers, principally, in the various States and in the District of Columbia—

- (a) Represented himself to be the manufacturer thereof, through inclusion of word "Knitting" in his trade name and display thereof on his letterheads, order blanks, and in advertising matter in various magazines and otherwise, facts being he did not make same, nor own and operate nor directly and absolutely control any mill and factory in which same was made, but purchased said products from various hosiery manufacturers;

With tendency and capacity to mislead and deceive purchasers thereof into false and erroneous belief that in buying from him they were dealing with manufacturer and thereby gaining an advantage in price by saving middleman's profit and in other ways; and

- (b) Represented, in advertising for distributors in the "Agents Wanted" columns of various magazines of interstate circulation, and through form letters and otherwise, and to the purchasing public generally, that his said hosiery was proof against spots, splashes, and snagging, facts being it was neither spot, splash, nor snag proof;

- (c) Represented, as aforesaid, that said hosiery was composed wholly of silk, facts being it was not composed wholly of silk, as long definitely and specifically understood by substantial number of purchasing public, as meaning product of cocoon of silkworm, employed for many years in manufacture of various articles of wearing apparel, considered, when thus made, of superior quality, and in great public demand, and commonly thus described and thus understood, as and when made wholly therefrom; and

- (d) Represented, as aforesaid, that he furnished his distributors with free sample outfits, facts being he did not thus furnish such outfits to his canvassers, but such outfits were paid for by them in cash and by services rendered;

With effect of misleading retailers, distributors, and substantial portion of purchasing public into erroneous belief that said representations were true and into purchase of substantial quantities of such hosiery because of said erroneous belief, and of unfairly diverting trade to him from competitor manufacturers and distributors of hosiery who do not misrepresent character or type of business in which engaged, quality, nature, and composition of their products, nor inducements offered to prospective distributors, in advertising, selling and distributing their said products among various States and in the District of Columbia:

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

Complaint

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Before *Mr. W. W. Sheppard*, trial examiner.
Mr. DeWitt T. Puckett 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 Alfred Boehm, an individual, doing business as Lynx Knitting Company, 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 would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Alfred Boehm, is an individual doing business as Lynx Knitting Company. His office and place of business are at 5-7 White Street, New York, N. Y. He is now, and for several years last past has been, engaged in the sale and distribution of hosiery, principally through house-to-house canvassers, in the various States of the United States and in the District of Columbia.

When orders are received by respondent, his said products are shipped from his 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. There is now, and has been for several years last past, a course of trade in commerce, in said hosiery, sold and distributed by respondent, between and among the various States of the United States and in the District of Columbia.

Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of hosiery in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent has represented and now represents himself to be the manufacturer of the hosiery he offers for sale and sells. Said representation is made by respondent through use of the word "Knitting" in his trade name which appears on his letterheads, order blanks, in advertising matter appearing in various magazines, and through other means.

In truth and in fact, the respondent does not manufacture the hosiery he offers for sale and sells, nor does he own and operate or

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directly and absolutely control the mill or factory in which said hosiery is manufactured. Respondent purchases said hosiery from Golden Belt Manufacturing Company, Durham, N. C., Great American Knitting Mills, Bechtelsville, Pa., Newnan Hosiery Company, Newnan, Ga., Best Made Hosiery Company, Quakertown, Pa., and other hosiery manufacturers.

PAR. 3. It is the common belief among wholesalers, retailers, and the purchasing public, that a superior grade of merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price, and that other advantages can be secured by dealing direct with the manufacturer. The representations made by respondent, as alleged in paragraph 2 hereof, have the tendency and capacity to deceive and mislead the purchasers of respondent's hosiery into the false and erroneous beliefs that when they purchase said hosiery from respondent they are dealing with the manufacturer of said hosiery and are thereby gaining an advantage in price by saving the middleman's profit and are gaining other advantages.

PAR. 4. Respondent's said hosiery is offered for sale and sold chiefly through house-to-house canvassers. As an inducement to persons to become his distributors and offer his said hose for sale, and to the purchasing public to buy said hosiery, the respondent has advertised and is now advertising in the "Agents Wanted" columns of various magazines having an interstate circulation, through form letters, and in various other ways, as follows:

LYNX HOSE ONCE BOUGHT ALWAYS SOUGHT—RINGLESS—SPLASH PROOF—ANTI-SNAG PROCESS.

These unusual features create immediate interest, quick sales and satisfied customers. 14 years of square dealing with our customers and salespeople. Wonderful line of men's and women's hosiery. Large variety of styles and colors. Liberal commission. Prompt delivery. Free outfit with sample hose starts you off. Write us at once.

New "anti-snag" silk hose * * * They are also rain and splash-proof. * * * Every woman will want those hose made by the anti-snag process. The rain may splash on these hose but there will be no spots on them.

* * * You can get samples of Lynx guaranteed hose free of cost to you * * *.

None of our ladies' silk hose contain any rayon, celanese or any artificial silk of any kind.

By means of the foregoing statements, the respondent represents to distributors, prospective distributors, and the purchasing public generally that his said hosiery is proof against spots, splashes and snagging; that said hosiery is composed wholly of silk; and that he furnishes his distributors with free sample outfits. In truth and in fact, respondent's said hosiery is not spot, splash or snag proof; it is not composed wholly of silk, the product of the cocoon of the silk

worm, but is composed in part of a material or materials other than silk. Respondent does not in fact furnish free sample outfits to his canvassers but said outfits are paid for by the said canvassers in cash and by services rendered.

PAR. 5. The word "silk" has long had to the minds of a substantial number of the purchasing public, and still has, a very definite and specific meaning, i. e., the product of the cocoon of the silk worm. Said product is now, and for many years has been, employed in the manufacture of various articles of wearing apparel including hosiery. Wearing apparel manufactured from silk is regarded generally as apparel of a superior quality and is in great public demand. At all times mentioned herein, the term "silk" has been commonly used to describe articles of wearing apparel manufactured wholly from silk and as a result thereof the purchasing public has come to understand that the apparel so described is manufactured wholly from silk, the product of the cocoon of the silk worm.

PAR. 6. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and does mislead retailers, distributors, and a substantial portion of the purchasing public into the erroneous beliefs that such representations are true and into the purchase of substantial quantities of said hosiery because of such erroneous beliefs.

There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of hosiery who do not misrepresent the character or type of business in which they are engaged, the quality, nature, and composition of their products, nor the inducements offered to prospective distributors, who likewise advertise, sell and distribute hosiery in commerce among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade has been, and is now being, unfairly diverted to respondent from said competitors. Thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 7. The above alleged acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors and 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 the Federal Trade Commission Act, the Federal Trade Commission, on December 22, 1937, issued, and

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on December 23, 1937, served its complaint in this proceeding upon respondent, Alfred Boehm, an individual, doing business under the trade name Lynx Knitting Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs having been waived and oral argument not having been requested, 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. The respondent, Alfred Boehm, is an individual doing business under the trade name Lynx Knitting Company. His office and place of business are at 5-7 White Street, New York, N. Y. He is now, and for several years last past has been, engaged in the sale and distribution of hosiery, principally through house-to-house canvassers, in the various States of the United States and in the District of Columbia.

When orders are received by respondent, his said products are shipped from his 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. There is now, and has been for several years last past, a course of trade in said hosiery sold and distributed by respondent, in commerce between and among the various States of the United States and in the District of Columbia.

Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals, and with partnerships and corporations likewise engaged in the sale and distribution of hosiery in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, the respondent has represented and now represents himself to be the manufacturer of the hosiery he offers for sale and sells. Said representation is made by respondent through

use of the word "Knitting" in his trade name which appears on his letterheads, order blanks, in advertising matter appearing in various magazines, and through other means.

In truth and in fact, the respondent does not manufacture the hosiery he offers for sale and sells, nor does he own and operate or directly and absolutely control any mill or factory in which said hosiery is manufactured. Respondent purchases said hosiery at wholesale from Golden Belt Manufacturing Company, Durham, N. C., Great American Knitting Mills, Bechtelsville, Pa., Newnan Hosiery Company, Newnan, Ga., Best Made Hosiery Company, Quakertown, Pa., and other hosiery manufacturers.

PAR. 3. It is the common belief among wholesalers, retailers, and the purchasing public, that a superior grade of merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price, and that other advantages can be secured by dealing direct with the manufacturer. The representations made by respondent, as alleged in paragraph 2 hereof, have the tendency and capacity to deceive and mislead the purchasers of respondent's hosiery into the false and erroneous beliefs that when they purchase said hosiery from respondent they are dealing with the manufacturer of said hosiery and are thereby gaining an advantage in price by saving the middleman's profit and are gaining other advantages.

PAR. 4. Respondent's said hosiery is offered for sale and sold chiefly through house-to-house canvassers. As an inducement to persons to become his distributors and offer his said hose for sale, and to the purchasing public to buy said hosiery, the respondent has advertised and is now advertising in the "Agents Wanted" columns of various magazines having an interstate circulation, through form letters, and in various other ways, as follows:

**LYNX HOSE ONCE BOUGHT ALWAYS SOUGHT
RINGLESS—SPLASH PROOF—ANTI-SNAG PROCESS**

These unusual features create immediate interest, quick sales and satisfied customers. 14 years of square dealing with our customers and salespeople.

Wonderful line of men's and women's hosiery. Large variety of styles and colors. Liberal commission. Prompt delivery. Free outfit with sample hose starts you off. Write us at once.

New "anti-snag" silk hose * * * They are also rain and splash-proof.
* * * Every woman will want these hose made by the anti-snag process.
The rain may splash on these hose but there will be no spots on them.

* * * You can get samples of Lynx guaranteed hose free of cost to you * * *.

None of our ladies' silk hose contain any rayon, celanese or any artificial silk of any kind.

By means of the foregoing statements, the respondent represents to distributors, prospective distributors, and the purchasing public generally that his said hosiery is proof against spots, splashes and snagging; that said hosiery is composed wholly of silk; and that he furnishes his distributors with free sample outfits. Such representations are false, misleading, and deceptive. In truth and in fact, respondent's said hosiery is not spot, splash, or snag proof. It is not composed wholly of silk, the product of the cocoon of the silkworm, but is composed in part of a material or materials other than silk. Respondent does not in fact furnish free sample outfits to his canvassers but said outfits are paid for by the said canvassers in cash and by services rendered.

PAR. 5. The word "silk" has long had to the minds of a substantial number of the purchasing public, and still has, a very definite and specific meaning, i. e., the product of the cocoon of the silkworm. Said product is now, and for many years has been, employed in the manufacture of various articles of wearing apparel including hosiery. Wearing apparel manufactured from silk is regarded generally as apparel of a superior quality and is in great public demand. At all times mentioned herein, the term "silk" has been commonly used to describe articles of wearing apparel manufactured wholly from silk and as a result thereof the purchasing public has come to understand that the apparel so described is manufactured wholly from silk, the product of the cocoon of the silkworm.

PAR. 6. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and does mislead retailers, distributors and a substantial portion of the purchasing public into the erroneous beliefs that such representations are true and into the purchase of substantial quantities of said hosiery because of such erroneous beliefs.

There are, among the competitors of respondent, as mentioned in Paragraph 1 hereof, manufacturers and distributors of hosiery who do not misrepresent the character or type of business in which they are engaged, the quality, nature and composition of their products, nor the inducements offered to prospective distributors, who likewise advertise, sell and distribute hosiery in commerce among the various States of the United States and in the District of Columbia. By use of the representations aforesaid, trade has been, and is now being unfairly diverted to respondent from said competitors.

CONCLUSION

The aforesaid acts and practices of respondent, Alfred Boehm, an individual, doing business under the trade name Lynx Knitting

Company, are to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 allegations of the complaint to be true, and states that he waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon him findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Alfred Boehm, an individual, doing business under the trade name Lynx Knitting Company, or under any other trade name, his agents, representatives, and employees, 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:

1. Representing, through the use of the word "Knitting" in his trade name or through the use of any word or term of similar import and meaning, or through any other means or device, or in any manner, that said respondent is the manufacturer of the products sold by him, unless and until he actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured by him;

2. Representing that said hosiery is proof against spots, splashes and snagging;

3. Representing that he furnishes his distributors or agents with free samples or outfits, when in fact said samples or outfits are paid for by the distributors in money or in services;

4. The use of the word "silk," or any other word or words of similar import and meaning, to describe or designate hosiery which is not composed wholly of silk, the product of the cocoon of the silkworm, unless, in the case of hosiery composed in part of silk and in part of rayon or material or materials other than silk, there is used in immediate connection and conjunction therewith, and in letters of at least equal size and conspicuousness, a word or words accurately describing the fiber, material or materials from which said hosiery was actually

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made; and provided, that the fiber or material content of such hosiery be accurately disclosed by designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent.

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

IN THE MATTER OF
PYROTECHNIC INDUSTRIES, 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 3309. Complaint, Jan. 25, 1938—Decision, Apr. 14, 1938

Where an association of fireworks manufacturers; and the members thereof, producers, together, of approximately 85 percent of the total production of commercial fireworks in the United States, theretofore in active and substantial competition with one another and with other manufacturers in making and seeking to make sales of fireworks in commerce between and among the several States, as were jobbers and retailers in sale of said products;

Entered into and carried out understandings and combinations with intent and effect of unlawfully restricting, suppressing, and eliminating competition in manufacture, jobbing, and retail of fireworks in commerce among and in the several States; and, in pursuance of said understandings, etc., and in furtherance thereof, and acting through and by means of said association, its officers and agents—

- (a) Agreed to fix and maintain, and fixed and maintained uniform prices and discounts in sale of fireworks to jobbers, and uniform prices and discounts at which jobbers should sell such products to retailers, and minimum retail prices thereof;
- (b) Agreed to designate, and designated concerns which should, and should not, be sold by such manufacturers as jobbers, and to compile and maintain, and compiled and maintained lists of concerns which should be, and were, recognized as chain stores allowed certain special discounts in addition to those granted other purchasers similarly situated, and to fix and maintain, and fixed and maintained special discounts to those concerns which purchased certain specified amounts of fireworks from combined member establishments;
- (c) Organized and held meetings of groups of fireworks jobbers in various parts of United States to devise means of asserting influence, and coercion and other means of inducing, requiring and coercing them to abide by said agreements and combinations, and effected and procured promises and agreements by various means from various jobbers throughout the United States, and from fireworks distributors' associations, to support and enforce aforesaid agreements, etc.; and
- (d) Agreed and attempted to maintain aforesaid understandings and combinations to unlawfully restrict, suppress, and eliminate competition in manufacture, jobbing, and retail sale of fireworks in United States, and agreed to refuse, and refused, to sell said products to certain concerns and thereby boycotted same and cut off or seriously impaired their supply of fireworks, and used and engaged in other acts and cooperative and concerted action and coercive methods and policies in promoting, establishing and carrying out aforesaid understandings, etc., through and by means of said association, its members, officers, and agents, for purpose of suppressing and preventing competition and restricting and restraining sale of fireworks in trade or commerce, as hereinabove set forth;