

Syllabus

IN THE MATTER OF

G. M. MOSES AND J. AVERBACH DOING BUSINESS AS
SUPERWEAR HOSIERY COMPANY

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

Docket 3379. Complaint, Apr. 13, 1938—Decision, June 7, 1938

Where two individuals engaged in sale and distribution of men's and women's hosiery—

(a) Represented that they were making a bona fide offer to prospective salesmen of good paying jobs not requiring the expenditure of much time or effort, and that hosiery would be shipped to such salesmen by them without charge in the form of either money or service, and advertised, as a method of promoting and increasing their sales, in newspapers and periodicals and other widely circulated forms of printed matter, that they solicited the services of sales representatives in various localities throughout the several States, through such statements as "Make up to \$27 weekly * * * Build Big Daily Cash Income," "Men Everywhere, even without experience, are making from \$4 to \$6 daily," "No House-to-House Selling!," "Your own hose and samples Free," "Free Selling Outfit!";

The facts being they did not make a bona fide offer, as represented, or carry out their promises in the manner and form in which they had thus misled prospective salesmen to believe, but required house-to-house selling and canvassing on a commission basis from their salesmen who, after expenditure of much time and effort, did not succeed in having any such daily or weekly cash income for their services, and they did not send such persons hosiery without charge, as stated, but hosiery samples sent by them became the property of such persons only after they had sold a stipulated amount, and they were required to pay transportation charges incident to the shipment;

(b) Represented in advertisements, published and widely circulated to customers and prospective customers, and in newspapers, periodicals, circulars, folders, and other forms of printed matter, and through their sales representatives, that their hosiery was woven with a special lockstitch which prevented it from snagging, running, or developing holes, through such statements as "Inter-Lock Stitch hosiery must wear for a period up to 8 months," "Most sensational silk stocking invention ever developed," "* * * found exclusively in Inter-Lock Stitch hosiery," etc.;

(c) Represented, as aforesaid, that their said hosiery would wear better and last longer than that made, offered for sale and sold by competitors, through aforesaid statements and such representations as "Guaranteed against runs," etc., "Guarantees to cut hosiery bills in half," "We insure against everything and anything that could happen to a stocking," "* * * made different than ordinary hose," etc.; and

(d) Falsely represented, through their solicitors or salesmen, that order solicited would be filled according to aforesaid statements and representations;

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Facts being hosiery in question was not woven with special lock-stitch which prevented it from snagging, running, or developing holes, would not wear better nor last longer than that made, offered, and sold by competitors, and purchasers' orders were not filled in accordance with salesmen's representations;

With effect of deceiving and misleading persons into becoming their sales representatives, and purchasers and prospective purchasers into erroneous and mistaken belief that said statements and representations made and caused to be made by them were true, and into purchase of their said product in reliance upon such belief, and with result that trade was unfairly diverted to them from competitors, including those manufacturers, sellers, and distributors of men's and women's hosiery who truthfully advertise and represent the quality, merit, and value of their respective products, and who do not advertise and otherwise represent that their said products have quality, merit, or value which they do not possess, do not falsely disparage the products of their competitors, and do not induce persons to become their salesmen or representatives through the use of false and misleading statements and representations as to earnings; to the injury of competition:

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

Mr. Joseph C. Fehr for the Commission.

Stacker & Stacker, of St. Paul, Minn., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that G. M. Moses and J. Averbach, individuals, doing business as Superwear Hosiery Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the 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. Respondents, G. M. Moses and J. Averbach, are individuals doing business as Superwear Hosiery Co., having their principal office and place of business located at 1449 University Avenue, in the city of St. Paul, in the State of Minnesota. Respondents are now, and for more than 1 year last past have been, engaged in the business of selling and distributing both men's and women's hosiery in commerce between the State of Minnesota and the various other States of the United States, and in the District of Columbia. When said hosiery is sold, respondents cause the same to be transported from their place of business in the State of Minnesota to purchasers thereof located in States other than the State of Minnesota, and in the District of Columbia. At all times mentioned herein, respondents have maintained a course of trade

in said products in commerce among and between the various States of the United States, and in the District of Columbia. Respondents are now, and for more than 1 year last past have been, in substantial competition with other individuals and with partnerships, firms, and corporations engaged in the manufacture of hosiery and in the sale and distribution thereof in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, and as a method of promoting and increasing their sales, respondents have advertised, caused to be advertised and still so advertise in newspapers, magazines, and other widely circulated forms of printed matter that they solicit the services of sales representatives in various localities throughout the several States of the United States, and in the District of Columbia. Typical of such representations are the following:

Make up to \$27 Weekly * * * Build Big Daily Cash Income.

Men everywhere, even without experience, are making from \$4 to \$6 daily. No House-to-House Selling!

We have found a way for you to get orders without canvassing.

Your own hose and samples Free.

Unlimited Supply of Free Hosiery Without One Cent of Cost to You.

Profits—Cash Every Day! FREE Selling Outfit!

A Real Money Making Side Line.

PAR. 3. By means of the foregoing and similar statements, respondents represent that they are making a bona fide offer to prospective salesmen of good paying jobs not requiring the expenditure of much time or effort on the part of such salesmen, and that hosiery will be shipped to such salesmen by the respondents without a charge in the form of either money or service.

PAR. 4. In truth and in fact respondents are not making a bona fide offer in the terms so represented and do not fulfill or carry out their promises in the manner and form in which they have misled such prospective salesmen to believe by such representations. Respondents do require house-to-house selling and canvassing on a commission basis from such salesmen, who after the expenditure of much time and effort do not succeed in having a cash income for their said services of from \$4 to \$6 daily, or \$27 weekly, as represented by respondents. Respondents do not send such persons hosiery without a charge in the form of either money or service, but the hosiery or samples sent by respondents to such persons become their property only after they have sold a stipulated amount of hosiery and such persons are required to pay transportation charges incident to the shipment by respondents.

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PAR. 5. Respondents, after thus obtaining the services of sales representatives, by and through their agency, sell and have sold their men's and ladies' hosiery directly to the persons by whom such hosiery is to be worn. These sales representatives, through house-to-house selling or canvassing, solicit and procure orders, which are forwarded to the respondents at St. Paul, Minn. In procuring said orders, respondents' sales representatives represent that said orders, when received by respondents, will be filled according to the statements and representations hereinafter set forth, which are made by them to the prospective purchasers at the time of the taking of the orders.

In the course of the operation of their business, as aforesaid, and for the purpose of inducing the purchase of the hosiery thus sold and distributed by them, respondents have caused, and now cause, advertisements to be published and widely circulated to customers and prospective customers in newspapers, magazines, circulars, folders, and in other forms of printed matter throughout the various States of the United States, and in the District of Columbia. In said advertisements, and by their sales representatives as aforesaid, respondents make many false and misleading statements and representations concerning the hosiery offered for sale, sold, and distributed by them, a portion of which are as follows:

GUARANTEED AGAINST RUNS, SNAGS, HOLES, or TOE PUNCTURES.
Guarantees to cut hosiery bills in half.

INTER-LOCK STITCH hosiery must wear for a period up to 8 months.

We insure against anything and everything that could happen to a stocking. Most sensational silk stocking invention ever developed.

2-way stretch Top is found exclusively with **INTER-LOCK STITCH** hosiery.

Our stocking is made different than ordinary hose, because we employ the "high-twist" process which renders it less susceptible to snagging.

This new invention positively eliminates garter runs * * * no runs can originate from usual garter strains.

PAR. 6. The statements and representations of respondents as set forth in paragraph 5 hereof, and others similar thereto, have the capacity and tendency to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of respondents' said hosiery into the false and erroneous beliefs:

1. That respondents' hosiery is woven with a special lock-stitch which prevents it from snagging, running, or developing holes;

2. That respondents' hosiery will wear better and last longer than the hosiery manufactured, offered for sale and sold by competitors;

3. That the purchasers' orders will be filled in accordance with the representations made by the salesmen.

PAR. 7. In truth and in fact, the hosiery offered for sale and sold by respondents is not woven with a special lock-stitch which prevents it from snagging, running, or developing holes. Said hosiery will not wear better or last longer than hosiery manufactured, offered for sale, and sold by competitors, and the purchasers' orders are not filled in accordance with the representations made by the salesmen.

PAR. 8. There are among the competitors of the respondents in commerce as herein set out, manufacturers, sellers, and distributors of men's and ladies' hosiery who truthfully advertise and represent the quality, merit, and value of their respective products, who do not advertise and otherwise represent that such products have quality, merit, or value which they do not have, who do not falsely disparage the products of competitors, and who do not induce persons to become their salesmen or representatives through the use of false and misleading statements and representations as to earnings.

PAR. 9. The statements and representations made by the respondents in their advertisements as above set forth had, and now have, the capacity and tendency to deceive and mislead, and do deceive and mislead, persons into becoming their sales representatives. Further, said advertisements had, and now have, the capacity and tendency to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of hosiery into the erroneous and mistaken belief that said statements and representations so made and caused to be made by respondents were and are true, and into the purchase of respondents' hosiery in reliance upon such belief. As a result thereof, trade has been unfairly diverted to respondents from those competitors who do not misrepresent their respective products. As a consequence thereof, injury has been done by respondents to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 13, 1938, issued and on April 18, 1938, served its complaint in this proceeding upon respondents G. M. Moses and J. Averbach, individuals, doing business as Superwear Hosiery Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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On May 13, 1938, said respondents filed their answer herein, within the extended time granted by the Commission, in which answer they admit all the material allegations of the complaint to be true, and state that they waive 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 them findings as to the facts and conclusion and an order to cease and desist from the violations of the law charged in the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto (no briefs having been filed and no request made for oral argument), 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, G. M. Moses and J. Averbach, are individuals doing business as Superwear Hosiery Co., with their principal office and place of business located at 1449 University Avenue, St. Paul, Minn. Respondents are now, and for more than 1 year last past have been, engaged in the business of selling and distributing both men's and women's hosiery in commerce between the State of Minnesota and the various other States of the United States, and in the District of Columbia. When said hosiery is sold, respondents cause the same to be transported from their place of business in the State of Minnesota to purchasers thereof located in States other than the State of Minnesota, and in the District of Columbia. At all times mentioned herein, respondents have maintained a course of trade in said products in commerce among and between the various States of the United States, and in the District of Columbia. Respondents are now, and for more than 1 year last past have been, in substantial competition with other individuals and with partnerships, firms, and corporations engaged in the manufacture of hosiery and in the sale and distribution thereof in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of their business, as aforesaid, and as a method of promoting and increasing their sales, respondents have advertised and caused to be advertised in newspapers, magazines, and other widely circulated forms of printed matter that they solicit the services of sales representatives in various localities throughout the several States of the United States, and in the

District of Columbia. Typical of such representations are the following:

Make up to \$27 Weekly * * * Build Big Daily Cash Income.

Men Everywhere, even without experience, are making from \$4 to \$6 daily.

No House-to-House Selling!

We have found a way for you to get orders without canvassing.

Your own hose and samples Free.

Unlimited Supply of Free Hosiery Without One Cent of Cost to You.

Profits—Cash Every Day! FREE Selling Outfit!

A Real Money Making Side Line.

PAR. 3. By means of the foregoing and similar statements, respondents have represented that they are making a bona fide offer to prospective salesmen of good paying jobs not requiring the expenditure of much time or effort on the part of such salesmen, and that hosiery will be shipped to such salesmen by the respondents without a charge in the form of either money or service.

PAR. 4. In truth and in fact respondents did not make a bona fide offer in the terms so represented and did not and do not now fulfill or carry out their promises in the manner and form in which they have misled such prospective salesmen to believe by such representations. Respondents do require house-to-house selling and canvassing on a commission basis from such salesmen, who after the expenditure of much time and effort do not succeed in having a cash income for their said services of from \$4 to \$6 daily, or \$27 weekly, as represented by respondents. Respondents did not and do not now send such persons hosiery without a charge in the form of either money or service, but the hosiery or samples sent by respondents to such persons become their property only after they have sold a stipulated amount of hosiery and such persons are required to pay transportation charges incident to the shipment by respondents.

PAR. 5. Respondents, after thus obtaining the services of sales representatives, by and through their agency, sell, and have sold their men's and ladies' hosiery directly to the persons by whom such hosiery is to be worn. These sales representatives, through house-to-house selling or canvassing, solicit and procure orders, which are forwarded to the respondents at St. Paul, Minn. In procuring said orders, respondents' sales representative represent that said orders, when received by respondents, will be filled according to the statements and representations hereinafter set forth, which are made by them to the prospective purchasers at the time of the taking of the orders.

In the course of the operation of their business, as aforesaid, and for the purpose of inducing the purchase of the hosiery thus sold

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and distributed by them, respondents have caused advertisements to be published and widely circulated to customers and prospective customers in newspapers, magazines, circulars, folders, and in other forms of printed matter throughout the various States of the United States, and in the District of Columbia. In said advertisements, and by their sales representatives as aforesaid, respondents have made many false and misleading statements and representations concerning the hosiery offered for sale, sold, and distributed by them, a portion of which are as follows:

GUARANTEED AGAINST RUNS, SNAGS, HOLES, or TOE PUNCTURES.
Guarantees to cut hosiery bills in half.

INTER-LOCK STITCH hosiery must wear for a period up to 8 months.
We insure against anything and everything that could happen to a stocking.
Most sensational silk stocking invention ever developed.

2-way stretch Top is found exclusively with **INTER-LOCK STITCH** hosiery.

Our stocking is made different than ordinary hose, because we employ the "high-twist" process which renders it less susceptible to snagging.

This new invention positively eliminates garter runs * * * no runs can originate from usual garter strains.

PAR. 6. The statements and representations of respondents as set forth in paragraph 5 hereof, and others similar thereto, have the capacity an dtendency to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of respondents' said hosiery into the false and erroneous beliefs:

1. That respondents' hosiery is woven with a special lock-stitch which prevents it from snagging, running, or developing holes;
2. That respondents' hosiery will wear better and last longer than the hosiery manufactured, offered for sale, and sold by competitors;
3. That the purchasers' orders will be filled in accordance with the representations made by the salesmen.

PAR. 7. In truth and in fact, the hosiery offered for sale and sold by respondents is not woven with a special lock-stitch which prevents it from snagging, running or developing holes. Said hosiery will not wear better or last longer than hosiery manufactured, offered for sale, and sold by competitors, and the purchasers' orders are not filled in accordance with the representations made by the salesmen.

PAR. 8. There are among the competitors of the respondents in commerce as herein set out, manufacturers, sellers, and distributors of men's and ladies' hosiery who truthfully advertise and represent the quality, merit, and value of their respective products, who do not advertise and otherwise represent that such products have quality, merit, or value which they do not have, who do not falsely disparage the products of competitors, and who do not induce persons to become

their salesmen or representatives through the use of false and misleading statements and representations as to earnings.

PAR. 9. The statements and representations made by the respondents in their advertisements as above set forth had, and now have, the capacity and tendency to deceive and mislead, and do deceive and mislead, persons into becoming their sales representatives. Further, said advertisements had, and now have, the capacity and tendency to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of hosiery into the erroneous and mistaken belief that said statements and representations so made and caused to be made by respondents were and are true, and into the purchase of respondents' hosiery in reliance upon such belief. As a result thereof, trade has been unfairly diverted to respondents from those competitors who do not misrepresent their respective products. As a consequence thereof, injury has been done by respondents 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 respondents G. M. Moses and J. Averbach, individuals, doing business as Superwear Hosiery Co., are to the prejudice of the public and of respondents' competitors, and are unfair methods of competition in commerce in violation 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 filed herein on May 13, 1938, by respondents, admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, G. M. Moses and J. Averbach, individuals, doing business as Superwear Hosiery Co., or under any other name or style, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of men's and women's hosiery in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

Representing in newspapers and magazines, or through circulars, catalogs, labels, or in any other form of printed matter, or in any other way:

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1. That respondents' hosiery is woven with a special lock-stitch which prevents it from snagging, running or developing holes;
2. That respondents' hosiery will wear better and last longer than the hosiery manufactured, offered for sale, and sold by competitors;
3. That the purchasers' orders will be filled in accordance with the representations made by respondents' salesmen; when such are not the facts.

It is further ordered, That said respondents, in conducting their business in interstate commerce and in the District of Columbia, do forthwith cease and desist from misrepresenting in any manner whatsoever the nature or character of the employment offered by them to salesman, agents, solicitors, or other persons in soliciting prospective purchasers and selling their products, or the manner of deriving compensation or the amount thereof to be derived from said employment, or from representing that any products or samples are given away free to persons so employed when such is not the fact.

And it is hereby further ordered, That the said respondents shall, within 60 days from the date of service upon them of this order, file with this Commission a report in writing setting forth the manner and form in which they shall have complied with this order.

Complaint

IN THE MATTER OF
JOY PACKAGE COMPANY, INC.

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

Docket 3203. Complaint, Aug. 16, 1937—Decision, June 8, 1938

Where a corporation engaged in sale and distribution of candy, including "break and take," "draw," or "deal" assortments composed of a number of individually wrapped penny pieces of uniform size and shape, together with a number of other articles of merchandise to be given as prizes to chance purchasers of a few of said pieces, the enclosed concealed color of which differed from that of the majority—

Sold said assortments to dealers for display and resale to the public, in accordance with aforesaid sales plan based on lot or chance, so assembled and packed that they might be thus displayed and resold, and with knowledge and intent that they should thus be resold to such purchasing public by retailers, by lot or chance, without alteration, addition, or rearrangement, in violation of public policy and in competition with many manufacturers who do not make and sell such "break and take," "draw," or "deal" assortments of candy, but sell their "straight" merchandise in competition in commerce with the others;

With result of supplying to and placing in the hands of retail merchants a means of violating the laws of the several States and with result that many competitors who regard such sale or distribution as morally bad, encouraging gambling among children, and injurious to the candy industry, and as resulting in violation of law, and therefore refuse, in the case of some, to resell candy so packed that it can be resold to public by lot or chance, were put to a competitive disadvantage and trade was unfairly diverted from them to it and others using similar methods, through purchase by retailers from it and such others, as more salable, of candy sold as above set forth:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Schonfield & Schonfield, of Baltimore, Md., 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 Joy Package Co., 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