

Complaint

27 F. T. C.

IN THE MATTER OF
JACOB GOODMAN AND BERTHA GOODMAN DOING BUSINESS AS M. GOODMAN & SON, JADE HOSIERY MILLS,
AND GOODY HOSE CO.

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

Docket 3485. Complaint, July 12, 1938—Decision, Dec. 22, 1938

Where partners engaged in sale and distribution of hosiery in commerce—
Made use of trade name including words "Hosiery Mills," and displayed said name upon the doors of their place of business and under "hosiery manufacturers" in the wholesaler and manufacturers classified directory, together with certain other trade names made use of by them, and in circulars, catalogs, billheads, letterheads, invoices, business cards and other advertising matter, together with such other statements as "Manufacturers and Mill Agents," "Mills: Strausstown, Pa." and "Distributors and Manufacturers of full fashioned hosiery," and thereby represented to members of purchasing public and customers and prospective purchasers of hosiery that they owned, operated, or controlled factory or mill making hosiery sold by them;

Facts being they did not make such products, but purchased same from various mills or factories which they did not own or control, and they did not own, control, or operate, as aforesaid, any hosiery mill or factory, for the purchase of the output of which, directly, there is a preference on the part of substantial number of members of purchasing public and those who purchase for resale as saving middleman's profit and affording advantages in reliability, and as generally more advantageous;

With tendency and capacity to mislead and deceive substantial portion of purchasing public and purchasers for resale into erroneous belief that said representations were true, and with result, as direct consequence of such mistaken and erroneous beliefs induced by their said advertising and misrepresentations, that number of purchasing public and purchasers for resale bought substantial quantity of said hosiery and trade was unfairly diverted from others likewise engaged in sale of hosiery and who truthfully advertise their products:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. John N. Wheelock for the Commission.

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 Jacob Goodman and Bertha Goodman, individually and as copartners, trading and

doing business under the names M. Goodman & Son, Jade Hosiery Mills, and Goody Hose 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 Jacob Goodman and Bertha Goodman are individuals trading and doing business as a copartnership under the names M. Goodman & Son, Jade Hosiery Mills, and Goody Hose Co., with their office and principal place of business at 294 Fifth Avenue, New York, N. Y. Respondents are now and have been for more than 4 years last past engaged in the sale and distribution of hosiery in commerce among and between the various States of the United States and in the District of Columbia. The respondents cause said products when sold by them to be transported from their place of business in the State of New York, or from the State of origin of the shipment thereof, to the purchasers thereof situated in various States of the United States, other than the State of the origin of the shipment thereof, and in the District of Columbia. In the course and conduct of their business as aforesaid the respondents maintain, and at all times mentioned herein 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.

PAR. 2. During all the times mentioned herein other partnerships and firms, corporations, and individuals have been and are engaged in the business of selling and distributing hosiery in commerce among and between the various States of the United States and in the District of Columbia. Among said competitors are many who do not falsely represent that they own, operate, or control the factory or mill wherein their products are made or manufactured. In the course and conduct of their business as herein described the respondents are now and have been during all the times mentioned herein in competition in said commerce with such other partnerships and firms, corporations, and individuals.

PAR. 3. In the course and conduct of their business of selling and distributing hosiery in said commerce as herein described and in furtherance of the sale of such hosiery, the respondents, during the times mentioned herein, have caused to be inserted on their letterheads, invoices, billheads, and business cards and in telephone and trade directories, circulars, publications, and other advertisements, the following statements and representations:

Complaint

27 F. T. C.

Jade Hosiery Mills;
Manufacturers and Mill Agents;
Mills: Strausstown, Pa.;
Mill: Strausstown, Pa.;
Mill: Philadelphia, Pa.;

Distributors and Manufacturers of full-fashioned hosiery.

The aforesaid statements together with others similar thereto, not set out herein, but of the same tenor and meaning, serve as representations by the respondents to members of the purchasing public, prospective purchasers of hosiery, that the respondents own, operate, or control the factory or mill wherein the hosiery which they sell and offer for sale is made or manufactured.

PAR. 4. In truth and in fact the respondents do not make or manufacture the hosiery which they sell and offer for sale, nor have they during any of the times mentioned herein made or manufactured such hosiery. The respondents do not and have not during any of such times owned or operated or directly and absolutely controlled any mill or factory wherein the hosiery which they sold and offered for sale was made or manufactured. The respondents during all of the times mentioned herein filled the orders received by them for hosiery from the prospective purchasers thereof, situated in various States of the United States and in the District of Columbia, with hosiery made or manufactured in a factory or mill which the respondents did not and do not own, operate, or control.

PAR. 5. There is and has been during all of the times mentioned herein a preference on the part of a substantial number of members of the purchasing public, and on the part of purchasers of hosiery purchasing for resale, for purchasing hosiery directly from the manufacturer or mill producing such hosiery. There is and has been during all of such times, an understanding and belief existing among a substantial number of such members of the purchasing public that a saving of the middleman's profit could be obtained, that a more uniform line of goods could be purchased and that other advantages could be obtained by purchasing hosiery directly from a manufacturer or mill operator. A substantial number of such members of the purchasing public believe and have believed during all of the times mentioned herein that more reliance can be placed on a manufacturer or mill operator, with regard to the carrying out of contracts, than can be placed upon one not a manufacturer or mill operator, and that dealing directly with a manufacturer or mill operator is preferable and more advantageous to the purchaser than is dealing with one not a manufacturer or mill operator.

PAR. 6. The use by respondents of the aforesaid statements and representations has a tendency and capacity to and does confuse, mislead, and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the respondents make or manufacture the hosiery which they offer for sale, and into the purchase of said hosiery because of said erroneous and mistaken belief. A substantial amount of trade in said commerce is thereby diverted unfairly to the respondents from their said competitors who make or manufacture hosiery and offer the same for sale, and from their said competitors who do not make or manufacture the hosiery which they offer for sale, but who do not represent themselves to be manufacturers or mill operators when they are not such in fact. In consequence thereof injury has been done and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition within the 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 July 12, 1938, issued its complaint in the above-entitled procedure and caused same to be served upon the respondents above named, Jacob Goodman, and Bertha Goodman, individually and as copartners, trading and doing business under the name of M. Goodman & Son, Jade Hosiery Mills and Goody Hose Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and expiration of the time in which to file answer, the Commission set said case down for hearing in New York City, N. Y., on November 10, 1938. Under date of October 28, 1938, respondent submitted a motion requesting permission to file an answer, which motion the Commission granted under date of November 7, 1938, whereupon respondents filed an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the facts. Thereafter, this proceeding came on for final hearing before the Commission on the said complaint and answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this

Findings

27 F. T. C.

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 respondents, Jacob Goodman and Bertha Goodman, are partners trading and doing business under the names and styles of M. Goodman & Son, Jade Hosiery Mills, and Goody Hose Co., with their office and principal place of business located at 294 Fifth Avenue, New York, N. Y.

Respondents are now, and have been for more than 4 years last past engaged in the sale and distribution of hosiery in commerce among and between the various States of the United States and the District of Columbia. Respondents cause said hosiery, when sold, to be transported from their place of business located in the State of New York to purchasers thereof located in States of the United States other than the State of New York. Respondents maintain, and during the times mentioned herein have maintained, a course of trade in hosiery so sold and distributed by them in commerce among and between the various States of the United States and the District of Columbia. Respondents, in the course and conduct of their business, are, and at all times hereinafter referred to have been, in competition with other individuals, corporations, firms, and partnerships likewise engaged in the sale and distribution of hosiery in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of their business, respondents, in soliciting the sale and in the sale of hosiery represent to various purchasers and prospective purchasers and others that they are manufacturers of the hosiery by them so offered and have caused circulars, catalogues, billheads, letterheads, invoices, business cards, and other advertising matter to be issued, published, and distributed to customers, prospective customers, and the public in general, located in the various States of the United States and in the District of Columbia, in which and on which the following statements and representations were made:

Jade Hosiery Mills;
Manufacturers and Mill Agents;
Mills: Strausstown, Pa.;

Distributors and Manufacturers of full-fashioned hosiery;

and have caused signs to be placed upon the doors of their place of business and carried in the wholesale and manufacturers classified

directory under "hosiery manufacturers" the names "Jade Hosiery Mills," "M. Goodman & Son," and "Goody Hosiery Co."

The aforesaid statements and others of similar tenor and meaning serve as representations by respondents to members of the purchasing public, customers, and prospective purchasers of hosiery, that respondents own, operate, or control the factory or mill wherein the hosiery they sell is manufactured.

PAR. 3. The representations made by respondents, with respect to the ownership, operation, or control of factories or mills as set out in paragraph 2 hereof are false, misleading, and untrue.

The hosiery sold by respondents is not manufactured by them; respondents purchase hosiery from various mills or factories not owned or controlled by them; during the times mentioned herein respondents did not own, operate, or control any mill or factory wherein the hosiery sold and offered for sale was manufactured; a substantial number of members of the purchasing public, and purchasers of hosiery for resale, have a preference for hosiery which they can buy direct from the manufacturer or mill producing such hosiery; members of the purchasing public and purchasers for resale have an understanding and belief that a saving of middlemen's profits can be obtained by purchasing directly from the manufacturer, mill owner, or operator and that they could place more reliance upon the manufacturer, mill, or mill operator than upon a jobber, and that to buy direct from a manufacturer was more advantageous and preferable.

PAR. 4. The representations made by respondents as set out in paragraph 2 hereof were and are calculated to, and had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public and purchasers for resale into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the advertising and misrepresentations of respondents, a number of the purchasing public and purchasers for resale have purchased a substantial quantity of said hosiery, with the result that trade has been unfairly diverted from various persons and corporations, and other partnerships likewise engaged in the sale of hosiery who truthfully advertise their products.

CONCLUSION

The acts, representations, and practices of the respondents as herein set out have been and are to the prejudice and injury of the public

Order

27 F. T. C.

and of respondents' 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Jacob Goodman and Bertha Goodman, individually and as copartners, trading and doing business under the names of M. Goodman & Son, Jade Hosiery Mills and Goody Hose Co., their representatives, agents, and employees, directly or through any corporate or other device, 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:

Representing, through the use of the words "Mills" or "Manufacturers" or any other words or phrases of similar import and meaning in their trade name and advertising matter, or through any other means or device, that they are the manufacturers or makers of said hosiery, unless and until they actually own and operate or directly and absolutely control the plant or mill wherein said hosiery is manufactured by them.

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

Syllabus

IN THE MATTER OF

McCURRACH ORGANIZATION, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2598. Complaint, Oct. 26, 1935—Decision, Dec. 29, 1938*

Where Irish poplin had come to stand for hand-woven fabric long made in Ireland and of high repute for its excellence, quality, workmanship, and design, and imported ties made therefrom and offered and sold in haberdasheries situated in the various States were preferred by substantial number of members of purchasing public as of superior quality and value and as hand-woven in said country, and word "Kerry" was well known by substantial number of members of purchasing public in various States as name of an historical and beautiful Irish county; and thereafter a corporation engaged in manufacture of certain neckties made from machine-woven poplin, and in sale and distribution thereof to retailers in various States for ultimate resale to members of the purchasing public and, as thus engaged, in substantial competition with others engaged in sale and distribution of men's neckwear, and including many who truthfully advertise place of manufacture of their products and do not make any other false statements in connection with sale and distribution thereof—

- (a) Represented through inclusion of word "Kerry" in designating as "Kerry Poplin" its neckwear aforesaid, and through advertisements and display cards distributed to retail dealer-purchasers depicting, as the case might be, Irish rural scenes and characters of obviously Irish nationality, and scenes portraying British soldiers, along with references to regimental stripes of British regiments, in connection with use of words "Kerry Poplin," and such statements as "Bright colorings mind you but a soft effect in neckties of KERRY POPLIN. His Lordship likes his country neckwear bright," etc., "Plaids mind you but toned down in KERRY POPLIN Neckties. His Lordship likes these new plaids because they are toned down in the Kerry Poplin weave * * * only one genuine Kerry Poplin," etc., and that its neckwear aforesaid was woven in Ireland, notwithstanding fact its said and less costly ties were not that Kerry poplin neckwear there woven; and
- (b) Falsely represented that words "Kerry Poplin" had been copyrighted, through such labels affixed to its said neckwear as "Kerry Poplin Copyrighted," etc., facts being said words constituted subject of successful trademark registration application by it, but not copyright;

With effect of misleading and deceiving substantial portion of purchasing public into mistaken and erroneous belief that such false statements, representations, and advertisements were true, and that its said "Kerry Poplin" neckwear was woven in Ireland, and with effect of diverting trade unfairly to it from its competitors in commerce who truthfully advertise place of manufacture of their products; to the injury of competition in commerce:

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

Complaint

27 F. T. C.

Before *Mr. E. J. Hornibrook*, trial examiner.

Mr. P. C. Kolinski for the Commission.

Hawes & Walsh, 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 McCurrach Organization, 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 in violation of section 5 of said act, 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. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located in the city of New York, in the State of New York. It is now, and for more than 1 year last past, has been engaged in the manufacture of neckwear and in the sale and distribution thereof in commerce between and among various States of the United States. It causes said products, when sold, to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States other than the State of New York. In the course and conduct of its business, respondent is in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 2. About the year 1650, there was originated in Ireland a process for the production of a fabric called poplin, woven by hand loom from silk and wool. This art of hand weaving has been handed down from one generation to another and kept largely within certain families. The hand woven product called poplin has acquired a very considerable reputation for excellence, quality, workmanship, and design, and though the name "Irish" was not generally impressed upon or affixed to the fabric, itself, the fabric came to be generally known throughout the world and is still known as Irish poplin. Among the products manufactured in Ireland from such poplin is neckwear, being principally neckties for men's wear. There have been and still are, from time to time, importations of neckwear manufactured in Ireland from Irish poplin, and there is a considerable

1455

Complaint

trade in Irish poplin neckwear in this country at prices which reflect not only its value as neckwear, but its artistic and historic value, as well. The name, Irish poplin, as applied to neckwear at the present time, implies quality and a value peculiar to the poplin, itself, as well as to the art of hand weaving such fabric.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, respondent causes labels to be affixed to certain of its neckwear, some labels reading:

Kerry Poplin Copyrighted

and other labels reading:

Kerry Poplin Copyrighted All Silk and Wool

Woven by McCurrach

Respondent causes advertisements to be placed in magazines having interstate circulation, containing pictorial representations of Irish or British appearance, below which the following statements are made:

"By Jove! The Regimentals" in KERRY POPLIN neckties. The colorings of fifteen famous British Regiments have a new charm in the soft-toned Kerry Poplin weave—* * *. There is only one genuine Kerry Poplin.

Bright Colorings Mind You but a Soft Effect in Neckties of KERRY POPLIN. His Lordship likes his country neckwear bright. The brightest colorings have a soft toned charm in the Kerry Poplin weave—of pure silk and fine wool.

Plaids Mind You But Toned Down in KERRY POPLIN Neckties. His Lordship likes these new Plaids because they are toned down in the Kerry Poplin weave—* * *

Respondent distributes in interstate commerce large display cards containing a picture of an Irish rural scene, including a horse-drawn vehicle such as is used in Ireland, and portraying characters of obvious Irish nationality, below which is printed the following statement:

Kerry Poplin is a pure silk and wool weave that has been, for years, the pride of the finest Irish silk weavers.

Respondent also distributes in interstate commerce large display cards containing a picture of officers in uniforms of the British Empire, below which is printed the following statement:

THE REGIMENTALS

IN THE FAMOUS KERRY POPLIN

The authentic stripings of fifteen famous British Regiments in the famous Kerry Poplin weave—a special construction of pure silk and fine wool.

Said products so labeled and advertised were and are being sold in interstate commerce by the respondent, when, in truth and in fact,

Complaint

27 F. T. C.

the words "Kerry Poplin" are not the subject matter of a valid, subsisting copyright, and the products to which the said words applied were not and are not made by the hand weaving process used in making poplin in Ireland, and were not and are not woven in the county of Kerry, Ireland, or elsewhere in Ireland, so as to justify the use of such words on the labels and in the advertising matter, as aforesaid, but the said products were and are being manufactured by machinery in the United States of America.

PAR. 4. There is a preference on the part of some of the buying public for certain goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States of America, and such goods so manufactured and imported command and bring from the said section of the public a higher price in the markets of the United States of America than domestic goods, wares, and merchandise of the same nature and description. Neckwear made in Ireland, from Irish poplin, because of its artistic quality and intrinsic value as alleged in paragraph 2 hereof, is a commodity for which a portion of the American buying public shows a preference. The county Kerry, in Ireland, because of its history and scenery, is well known, and a large portion of the American buying public associates the word "Kerry" with the country of Ireland. The advertising and the labeling of its goods, wares, and merchandise by respondent in manner and form as hereinbefore set out have a capacity to mislead and deceive the purchasing public by creating the impression and belief that the products advertised and offered for sale by respondent in interstate commerce as aforesaid are all manufactured in Ireland, and imported to America, which has the tendency and capacity to divert trade to respondent from the competitors of respondent who actually import similar goods, wares, and merchandise which are manufactured in foreign countries, into the United States, for sale to the buying public, and from those competitors of respondent who manufacture and sell in interstate commerce similar goods, wares, and merchandise to those sold in interstate commerce by respondent, but who truthfully represent same to be manufactured in the United States, instead of foreign countries.

PAR. 5. Wherefore, the above alleged acts and things done by respondent are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate 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 the 26th day of October 1935, issued and served its complaint in this proceeding upon respondent, McCurrach Organization, Inc., charging it 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Raymond A. Walsh, attorney for the respondent, before Edward J. Hornibrook, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, oral argument not having been requested; and the Commission, having duly considered the matter, 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. Respondent, McCurrach Organization, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and having its office and principal place of business in the city of Brooklyn, State of New York.

PAR. 2. The respondent is now, and has been for more than 3 years last past, engaged in the business of manufacturing, selling, and distributing men's neckwear designated as "Kerry Poplin." Respondent sells said neckwear to retail dealers situated in various States of the United States for ultimate resale to members of the purchasing public, and the respondent causes the said neckwear, when sold by it, to be transported from its aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said neckwear among and between the various States of the United States.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States

with other corporations and with partnerships, firms, and individuals selling and distributing men's neckwear. Among such competitors in said commerce are many who truthfully advertise the place of manufacture of their merchandise and who do not make any other false statements in connection with the sale and distribution of their merchandise.

PAR. 4. Respondent has been engaged in the business of manufacturing neckties in the State of New York for 60 years, but has manufactured neckties from poplin woven by machinery only since 1934. Respondent, since the year 1934, has woven and is now weaving and manufacturing neckties designated as Kerry Poplin at its aforesaid place of business in the city of Brooklyn, State of New York. Respondent weaves the poplin fabric comprising such neckties solely by machinery. The respondent sells and distributes as aforesaid between \$20,000 and \$30,000 worth of Kerry Poplin neckties per year.

PAR. 5. In the year 1755, there was begun in Ireland the production of a fabric called poplin. Poplin, which is hand woven in Ireland, has acquired a very good reputation in the United States for its excellence, quality workmanship, and design. This fabric came to be generally known throughout the various States of the United States as Irish Poplin. Among the products which are manufactured in Ireland from poplin and sold and distributed in the United States is neckwear or neckties for men's wear. These neckties, manufactured from Irish Poplin, are imported into the United States from Ireland, and there is, and has been during all the times mentioned herein, a substantial course of trade in commerce in said Irish Poplin neckties among and between the various States of the United States. A substantial number of members of the purchasing public, situated in various States of the United States have, and have had, during all the times mentioned herein, the understanding and belief that neckwear made from Irish Poplin is of a superior quality and value and is hand woven in Ireland. A substantial number of members of the purchasing public situated in various States of the United States have, and have had, during all the times mentioned herein, a preference in purchasing neckties for Irish Poplin neckties woven in Ireland. Irish Poplin neckties are offered for sale and sold in haberdasheries situated in the various States of the United States. Irish Poplin neckties sell at retail in the United States for \$2.50. The Kerry Poplin ties of the respondent sell at retail in the United States for \$1.50.

PAR. 6. Kerry is the name of a county in Ireland, and because of its historical background and beautiful scenery is well known by a substantial number of members of the purchasing public situated in

1455

Findings

various States of the United States. Irish Poplin is made in Ireland although none of it is actually made in the county of Kerry.

PAR. 7. In the course and conduct of its said business and for the purpose of inducing the purchase of its Kerry Poplin ties, the respondent has caused advertisements containing representations and claims with respect to such merchandise to be inserted in a magazine having a circulation among and between the various States of the United States. Among and typical of the representations contained in said advertisements, so used and disseminated as aforesaid, are the following:

"By Jove! The Regimentals."

in

Kerry Poplin Neckties

The colorings of fifteen famous British Regiments have a new charm in the soft-toned Kerry Poplin weave—a special construction of pure silk and fine wool. Retail price \$1.50. Found at leading stores throughout the country. Look for the white label. There is only one genuine Kerry Poplin. Woven by McCurrach Tiemakers who weave their own silks.

Bright colorings mind you but a soft effect in neckties of KERRY POPLIN. His Lordship likes his country neckwear bright. The brightest colorings have a soft-toned charm in the Kerry Poplin weave—of pure silk and fine wool. Retail price \$1.50. Found at leading stores throughout the country. Look for the white label. There is only one genuine Kerry Poplin. Woven by McCurrach Tiemakers who weave their own silks.

Plaids mind you but toned down in KERRY POPLIN Neckties. His Lordship likes these new plaids because they are toned down in the Kerry Poplin weave—a special construction of pure silk and fine wool. Retail price \$1.50. Found at leading stores throughout the country. Look for the white label. There is only one genuine Kerry Poplin. Woven by McCurrach Tiemakers who weave their own silks.

The respondent has caused labels to be affixed to its Kerry Poplin neckwear, sold and distributed as aforesaid, containing the following statements:

McCurrach Poplin Copyrighted

and has caused other labels to be affixed to such neckwear containing the following statements:

Kerry Poplin Copyrighted. All Silk and Wool Woven by McCurrach

Respondent distributes to the aforesaid retail dealers, purchasers of its Kerry Poplin neckwear, situated in various States of the United States, large display cards for the use of such dealers for the purpose of inducing the purchase of the Kerry Poplin neckties. Such cards contain a picture of an Irish rural scene, including a horse-drawn

vehicle, and portray characters of obviously Irish nationality, below which is printed, among others, the following statement:

Kerry Poplin is a pure silk and wool weave that has been, for years, the pride of the finest Irish silk weavers.

Respondent also distributes to the retail dealers, as aforesaid, display cards containing a picture of officers of the British Empire in British uniforms, below which is printed the following statement:

The Regimentals! In the Famous Kerry Poplin. The authentic stripings of fifteen famous British Regiments in the Famous Kerry Poplin weave—a special construction of pure silk and fine wool. Woven by McCurrach.

PAR. 8. Through the use of statements and representations hereinabove set forth and others similar thereto, not herein set out, all of which purport to be descriptive of respondent's neckwear and of its place of manufacture, the respondent has represented directly and by implication, among other things, that the Kerry Poplin ties are woven in Ireland and that the words "Kerry Poplin" have been copyrighted. The use by the respondent in the manner aforesaid of the word "Kerry," a county in Ireland known to members of the purchasing public situated throughout the United States, in conjunction with the use of the word "Poplin," a fabric woven in Ireland for generations and well known throughout the United States for its quality if woven in Ireland, to designate its neckwear has the capacity and tendency to and does cause members of the purchasing public to have the belief that the Kerry Poplin neckwear of the respondent was woven in Ireland. The representation by the respondent, in the manner aforesaid, that its Kerry Poplin neckwear was woven in Ireland is emphasized by the use of the respondent in the aforesaid advertisements of pictorial representations depicting Irish rural scenes portraying characters of obviously Irish nationality and other scenes portraying British soldiers with references to the regimental stripes of British regiments in connection with the use of the words "Kerry Poplin."

PAR. 9. In truth and in fact, the Kerry Poplin neckties, sold and distributed by the respondent as aforesaid, are not woven in Ireland but are woven by respondent at its aforesaid place of business in the State of New York. The words "Kerry Poplin" have not been copyrighted by the respondent. The application by the respondent for registration of the words "Kerry Poplin" as a trade-mark has been granted.

PAR. 10. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to its Kerry Poplin neckwear has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the errone-

1455

Order

ous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's Kerry Poplin neckwear was woven in Ireland. As a result, trade has been diverted unfairly to the respondent from its competitors in said commerce who truthfully advertise the place of manufacture of their neckwear. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all 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, the answer of respondent, testimony and other evidence taken before Edward J. Hornbrook, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, McCurrach Organization, Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of men's poplin neckwear in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, through advertisements or otherwise, by the use of the word "Kerry" or any other word or words indicating Irish origin, or in any other manner, that said neckwear was made from poplin woven in Ireland (Eire) unless and until such neckwear is made from poplin woven in Ireland (Eire) and known as "Irish Poplin."

2. Affixing to such neckwear labels bearing the legend "copyrighted."

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.

Complaint

27 F. T. C.

IN THE MATTER OF
PINAUD, INC.

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

Docket 3420. Complaint, May 12, 1938—Decision, Dec. 30, 1938

Where a corporation engaged in sale and distribution of its "Pinaud's Six-Twelve (612) Creme de Mascara" cosmetic to wholesale and retail dealers in various States for ultimate resale to purchasing public; in advertising the same in newspapers, periodicals, and other publications circulating among the various States and in the District of Columbia, and in circulars distributed to prospective purchasers as aforesaid—

Represented, directly and by implication, that use of said preparation would increase or promote growth of eyelashes and cause them to be longer, heavier, and of silkier quality, through such statement as " * * * Sums up all the things you want in an eyelash beautifier. It is * * * 6. Promotes eyelash growth. Its rich creaminess and smoothness is good for your eyelashes. It fosters a longer, heavier, silkier quality," facts being use thereof would not aid in growth of eyelashes or cause them to be longer, heavier, and silkier and said claims were inaccurate, incorrect, and exaggerated and not true statements of effectiveness of preparation in question;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations were true, and that its said preparation would accomplish results indicated, and of causing such portion of said public, because of said erroneous and mistaken beliefs, to buy substantial quantities thereof, and with result that trade was diverted unfairly to it from its competitors in commerce who truthfully advertise the effectiveness and use of their respective preparations; to the injury of competition in commerce:

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

Mr. Clark Nichols for the Commission.

Proskauer, Rose & Paskus, of New York City, for respondent.

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 the Pinaud, Inc., a corporation, hereinafter referred to as respondent, has 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: