

IN THE MATTER OF
EDWARD E. PARTAIN, TRADING AS PAR-TEX HOSIERY
MILLS

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

Docket 3510. Complaint, July 26, 1938—Decision, Jan. 10, 1939

Where an individual engaged in sale of men's and women's hosiery through agents whom he supplied with samples, sales kits, letter of introduction, and other supplies and printed matter, and who solicited sale of his said products directly by house-to-house canvassing—

- (a) Represented, directly, that hosiery purchased would be of quality, grade, texture, and color corresponding to samples selected by purchaser, and that it was woven with a special lock stitch which prevented it from snagging, running, or developing holes, and that it would last from 6 to 12 months and was guaranteed, and that he would replace, with new, worn hosiery which failed to wear as represented, facts being hosiery supplied was inferior in grade, texture, and quality to that represented by his said agents and, in many instances, not of size and color indicated by purchaser, was not woven as above set forth, nor so as to prevent it from snagging, running, or developing holes, and it did not last for period of time specified and he did not make replacements as promised and guaranteed, but included with goods shipped guarantee which differed from that represented by his salesmen or representatives;
- (b) Made use of word "Mills" in trade name employed by him, and represented that he was the only hosiery manufacturer in the State of Texas selling direct to the consumer, facts being he did not make women's hose offered and sold by him, but purchased said product from various manufacturers thereof; and
- (c) Delayed unduly and unreasonably correction of mistakes in filling orders, and failed and neglected to make promised adjustments, and retained hosiery sent in for exchange or adjustment of mistakes and failed and neglected to refund purchaser's money and refused adjustments on ladies' hose without payment ranging from 35 to 45 cents a pair;

With effect of misleading and deceiving purchasers and prospective purchasers into erroneous belief that such representations were true, and into purchase of his said product in and on account of such beliefs, and with result that trade was thereby unfairly diverted to him from competitors who do not misrepresent the character and quality of their products or their business status:

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. Arthur F. Thomas*, trial examiner.

Mr. Charles S. Cox for the Commission.

Coke & Coke, of Dallas, Tex., for respondent.

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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 Edward E. Partain, trading as Par-Tex Hosiery Mills, 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:

PARAGRAPH 1. Respondent, Edward E. Partain, is an individual trading as Par-Tex Hosiery Mills, having his principal office and place of business at 2814 Elm Street, in the city of Dallas, State of Texas. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling men's and ladies' hosiery in commerce between and among the several States of the United States and in the District of Columbia. Respondent causes said hosiery, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in States of the United States other than Texas and in the District of Columbia. There has been for more than 1 year last past, and still is, a constant current of trade in commerce in said men's and ladies' hosiery thus 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 for more than 1 year last past has been, in substantial competition with other individuals and with partnerships, firms, and corporations engaged in the sale and distribution of men's and ladies' 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 aforesaid, the respondent purchases his ladies' hose from various manufacturers. Respondent's best grade and first line of ladies' hosiery is purchased at a cost of from \$5.50 to \$6.50 per dozen pairs to respondent. Respondent has agents and representatives who are given samples of various men's and ladies' hosiery, certain sales kits, and letter of introduction and authority as agent, along with other supplies and literature furnished by respondent. Respondent, by and through said sales agents and representatives, solicits the sale of and sells and has sold men's and ladies' hosiery directly to the persons by whom said hosiery is to be worn, through house to house canvassing. Orders so solicited and received are forwarded to the respondent at his principal place of business in the city of Dallas, in the State of

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Texas, and shipments are made pursuant thereto. Said sales agents and representatives of respondent represent that said orders, when received by respondent, are filled according to the statements and representations made by them and with hosiery of a grade, quality, and texture as shown by samples displayed by said sales agents and representatives, and of a color and size selected by the customer.

PAR. 3. Respondent in the course and conduct of his business, in commerce, as aforesaid, represents by and through his sales agents and representatives:

(a) That the hosiery purchased from respondent will be of a grade, texture and quality corresponding to the sample selected by the purchaser from the samples exhibited by said sales agent or representative, and of the color and size selected by such purchaser;

(b) That the "Par-Tex" hosiery sold by him is woven with a special lock stitch which prevents them from snagging, running, or developing holes;

(c) That such hosiery is guaranteed to be hole-proof from 6 to 12 months.

PAR. 4. Respondent in the course and conduct of his business in said commerce, as aforesaid, through his sales agents and representatives makes use of, and has made use of, the following methods and practices:

(a) Sending to purchasers hosiery of a grade, texture, and quality different from that of the samples exhibited by the sales agent and representatives of the respondent and from which the purchaser had made the selection and in forwarding the purchaser hosiery of a different color and size from that selected by such purchaser;

(b) Unduly and unreasonably delaying the correction of mistakes in filling orders, or failing and neglecting to make adjustments as promised;

(c) Retaining hosiery sent in for exchange or adjustment of mistakes and failure or neglecting to refund the money paid by the purchasers;

(d) Refusing to make adjustments on ladies' hose unless and until purchasers remit or agree to pay from 35 to 45 cents per pair for each pair of ladies' hosiery on which adjustment is made;

(e) By including in each parcel or envelope in which his hosiery is shipped a guarantee different from that represented by his salesman or representative, to wit:

GUARANTEE

We guarantee our merchandise to be perfect in material and workmanship and with reasonable care and proper laundering to give service as follows:

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- No. 286 Men's Socks, 6 pairs guaranteed for 12 months
- No. 360 Men's Socks, 6 pairs guaranteed for 12 months
- No. 205 Men's Socks, 6 pairs guaranteed for 12 months
- No. 1200 Men's Socks, 6 pairs guaranteed for 8 months
- No. 1240 Men's Socks, 6 pairs guaranteed for 8 months

All women's hose guaranteed 6 pairs to wear 6 months.

With proper laundering and care you will have no difficulty whatever in securing the maximum wear from every pair. If, however, you are not satisfied with the service you receive, return the hose to us laundered, and adjustment will be made in accordance with the amount of wear you have received.

Notice: For best results silk stockings should be washed after each wearing

PAR-TEX HOSIERY MILLS

2814 Elm Street

Dallas, Texas

The only hosiery manufacturer in Texas selling direct to the consumer.

PAR. 5. The representations of respondent set forth in paragraphs 3 and 4 hereof, and others similar thereto, have the capacity and tendency to deceive and mislead, and do deceive and mislead, purchasers and prospective purchasers of respondent's said hosiery into the false and erroneous belief:

(a) That the men's and ladies' hosiery sold and distributed by respondent are made of fabrics of the grade, texture, and quality corresponding to the samples displayed by respondent's sales agents and representatives and as selected by said purchasers, and of the size and color indicated by the purchaser;

(b) That correction of mistakes in filling orders will not be unduly and unreasonably delayed;

(c) That deposits made on hosiery purchases by purchasers will be refunded unless exchange or other satisfactory adjustment is made;

(d) That respondent's hosiery is woven with a special lock stitch, preventing it from snagging, running, or developing holes;

(e) That respondent's hosiery is guaranteed to be hole-proof, snag-proof, or run-proof for a period of from 6 to 12 months;

(f) That purchasers of respondent's hosiery will get a new pair in exchange without additional charge if and when it develops holes within the period guaranteed;

(g) That respondent is the manufacturer of the ladies' hosiery sold and offered for sale by him.

PAR. 6. In truth and in fact respondent ships to purchasers hosiery of a grade, texture, and quality inferior to the samples selected and of a grade, texture, and quality inferior to that represented by his sales agents and representatives, and, in many instances, not of the size and color indicated by the purchaser. Respondent unduly and unreasonably delays correction of mistakes and filling orders, and

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neglects to make adjustments as promised. Respondent does not refund the deposit made on hosiery purchases by purchasers when exchanges or other adjustments are not made. The hosiery sold by the respondent is not woven with a special lock stitch, nor does the weave or stitch prevent said hosiery from snagging, running, or developing holes. Said hosiery will not, and does not, under normal wear, last for the period of time specified and the respondent will not, and does not, replace worn hosiery with new hosiery within the period of time promised in said guarantee. Respondent does not replace a pair of ladies' worn hosiery unless the purchaser will pay from 35 to 45 cents per pair for each pair replaced, which in truth and fact practically covers the actual cost to respondent of a new pair of respondent's best grade and first line of ladies' hose. Respondent does not manufacture the ladies' hosiery sold and offered for sale by him.

PAR. 7. There are among the competitors of the respondent, in said commerce, manufacturers, sellers, and distributors of hosiery who do not in any manner misrepresent their products and who do not use the methods or practices used by the respondent as hereinbefore alleged in connection with the offering for sale, sale and distribution of their products.

PAR. 8. The above alleged acts and practices of respondent have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 5, hereof, and into the purchase of respondent's said hosiery in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from his competitors, and, as a consequence thereof, substantial injury is done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of 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 26, 1938, issued, and served its complaint in this proceeding upon respondent, Edward E. Partain, 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

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permission to withdraw said answer and to substitute therefor answer admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 substitute answer, 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, Edward E. Partain, is an individual trading as Par-Tex Hosiery Mills, having his principal office and place of business at 2814 Elm Street, Dallas, Tex. Respondent is now and for more than 1 year last past has been engaged in the business of selling men's and women's hosiery in commerce between and among the several States of the United States and in the District of Columbia. Respondent causes said hosiery, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in States of the United States other than Texas and in the District of Columbia. There has been for more than 1 year last past and still is a constant current of trade in commerce in said men's and women's hosiery thus 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 for more than 1 year last past has been in substantial competition with other individuals, firms, and corporations engaged in the sale and distribution of men's and women's 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 aforesaid, the respondent purchases his women's hose from various manufacturers. He has agents who are given samples of various men's and women's hosiery, certain sales kits, a letter of introduction and authority as agent along with other supplies and literature furnished by respondent. Through these agents he solicits the sale of and sells and has sold men's and women's hosiery directly to the persons by whom said hosiery is to be worn by means of house to house canvassing. Orders so solicited and received are forwarded to the respondent at his place of business in Dallas, Tex., and shipments are made pursuant thereto. Said sales agents of respondent represent that said orders, when received by respondent, are filled according to the statements

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made by them and with hosiery of a quality and texture as shown by samples displayed by said sales agents and of a color and size selected by the customer.

PAR. 3. Respondent, in the course of his business in commerce as aforesaid, represents directly and by and through his sales agents:

(a) That the hosiery purchased will be of a grade and quality corresponding to the samples selected by the purchaser from the samples exhibited by said sales agent, and of the color and size selected by said purchaser;

(b) That the "Par-Tex" hosiery sold by him is woven with a special lock stitch which prevents them from snagging, running, or developing holes;

(c) That such hosiery is guaranteed to be hole-proof from 6 to 12 months;

(d) That respondent is the only hosiery manufacturer in Texas selling direct to the consumer.

PAR. 4. In truth and in fact respondent ships to purchasers hosiery of a grade, texture, and quality inferior to that represented by his sales agents and in many instances such hosiery is not of the size and color indicated by the purchaser. The hosiery sold by the respondent is not woven with a special lock stitch nor does the weave or stitch prevent said hosiery from snagging, running, or developing holes. Said hosiery will not and does not, under normal wear, last for the period of time specified and the respondent will not and does not replace worn hosiery with new hosiery within the period of time promised in said guarantee. Respondent does not manufacture the ladies' hosiery sold and offered for sale by him.

PAR. 5. Respondent in the course and conduct of his business in said commerce, as aforesaid, through his sales agents and representatives make use of, and has made use of, the following methods and practices:

(a) Sending to purchasers hosiery of a grade, texture, and quality different from that of the samples exhibited by the sales agent and representatives of the respondent and from which the purchaser had made the selection and in forwarding the purchaser hosiery of a different color and size from that selected by such purchaser;

(b) Unduly and unreasonably delaying the correction of mistakes in filling orders, or failing and neglecting to make adjustments as promised;

(c) Retaining hosiery sent in for exchange or adjustment of mistakes and failing or neglecting to refund the money paid by the purchasers;

(d) Refusing to make adjustments on ladies' hose unless and until purchasers remit or agree to pay from 35 to 45 cents per pair for each pair of ladies' hosiery on which adjustment is made;

(e) Including in each parcel or envelope in which his hosiery is shipped a guarantee different from that represented by his salesman or representative, to wit:

GUARANTEE

We guarantee our merchandise to be perfect in material and workmanship and with reasonable care and proper laundering to give service as follows:

No. 286 Men's Socks, 6 pairs guaranteed for 12 months

No. 360 Men's Socks, 6 pairs guaranteed for 12 months

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All women's hose guaranteed 6 pairs to wear 6 months.

With proper laundering and care you will have no difficulty whatever in securing the maximum wear from every pair. If, however, you are not satisfied with the service you receive, return the hose to us laundered, and adjustment will be made in accordance with the amount of wear you have received.

Notice: For best results silk stockings should be washed after each wearing.

PAR-TEX HOSIERY MILLS

2814 Elm Street,

Dallas, Texas

The only hosiery manufacturer in Texas selling direct to the consumer.

PAR. 6. The above acts and representations of respondent have the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers into the erroneous beliefs that such representations are true and into the purchase of respondent's said hosiery in and on account of such beliefs. Thereby trade is unfairly diverted to respondent from his competitors who do not misrepresent the character and quality of their products or their business status.

CONCLUSION

The aforesaid acts and practices of respondent 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 and the substituted answer of respondent filed herein on November 28, 1938, in which answer respondent admits all the material allegations of facts set

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forth in said complaint and states that he waives all intervening procedure and further hearings as to said facts, 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, Edward E. Partain, an individual trading as Par-Tex Hosiery Mills, or under any other name, his agents, servants, 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, directly or through any corporate or other device—

(a) Representing directly or by means of sales agents or otherwise that the hosiery purchased will be of a grade, quality, texture, and color corresponding to samples selected by the purchaser unless he does in fact deliver to such purchasers, hosiery of the same grade, quality, texture, and color as that selected by the purchaser.

(b) Representing that his hosiery is woven with a special lock-stitch.

(c) Representing that the weave or stitch in his hosiery will prevent the hosiery from snagging, running, or developing holes.

(d) Representing by means of a guarantee, or by other means, that under normal wear, his hosiery will last from 6 to 12 months or any other specified period of time.

(e) Representing by means of a guarantee, or by other means, that he will replace worn hosiery with new hosiery within any specified time provided by such guarantee unless he does in fact make replacements in accordance with such guarantee.

(f) Representing, through use of the word "Mills," or any other word or term of similar import or meaning, in his trade name or in any other manner, or through any means or device, that he manufactures ladies' hosiery until and unless he owns and operates or directly and absolutely controls a manufacturing plant wherein ladies' hosiery is manufactured by him.

(g) Supplying purchasers with hosiery of a grade, texture, and quality different from that of the samples exhibited by the sales agents and representatives of respondent, from which the purchasers have made selections and from forwarding to purchasers hosiery of a different color and size from that selected by such purchasers.

(h) Unduly and unreasonably delaying the correction of mistakes in filling orders, or failing and neglecting to make adjustments as promised.

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(i) Retaining hosiery sent in for exchange or adjustment of mistakes and failing or neglecting to refund the money paid by such purchasers.

(j) Refusing to make adjustment on ladies' hosiery returned where such hosiery is not accompanied by a remittance of from 35 to 45 cents per pair unless and until he informs the purchasers at the time of the placing of the original order for said hosiery that adjustments will only be made when accompanied with such remittances.

It is further ordered, That the respondent shall, within 60 days after the 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
ROXIE THORSON, TRADING AS THORSON'S SOAP LAKE
PRODUCTS COMPANY

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

Docket 2832. Complaint, June 3, 1936—Decision, Jan. 16, 1939

Where an individual engaged in preparing certain packaged mineral salts, (1) salt ingredients of which were obtained from Soap Lake in State of Washington, and (2) which included such products as salts, effervescent salts, "Liniment," "Skin-Aid Soap Lake Ointment," "Shampoo," and "Skin-Aid Soap Lake Soap," and designations of which (3) included words "Soap Lake," and in selling and distributing, under trade name including words "Soap Lake Products," her said preparations to purchasers in other States and in the District of Columbia, in competition with others likewise engaged in preparing, distributing, and selling mineral salt or other products prepared, intended and sold for same purposes for which her said preparations were sold in commerce as aforesaid; in advertising her said products through letters, pamphlets, and other material circulated through the various States, and through broadcasts from stations of extrastate audience—

Featured her trade name, as aforesaid, and, through such statements as "A Short Cut to Health through Nature," "Health Through the Skin," "The World's Greatest Healing Spot," and "* * * contain all the qualities of the lake itself," and "Bringing a great Health Resort to your Home," in connection with references to said Soap Lake and Soap Lake salts, etc., represented that her products aforesaid would prevent and cure, or be beneficial in the treatment of, a large number of diseases, ailments, and afflictions, including stomach, liver, bowel, and kidney troubles, rheumatism, diabetes, skin diseases, diseases of the blood, high blood pressure, arthritis, neuritis, and numbers of others;

Facts being use thereof would not cure any or all of such diseases, ailments, and afflictions and did not constitute treatment for all or any thereof, and none of said products were beneficial in treatment of all or any of said conditions set forth as above indicated, and benefits, if any, obtained from use of any or all of said products were limited to those resulting from the laxative and diuretic properties and action thereof, and their use as either external or internal cleansing agents, and representations above set forth as descriptive of products in question were grossly exaggerated, misleading, and untrue;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that all of said representations were true, and with result, as direct consequence of such mistaken and erroneous beliefs induced by said acts and misrepresentations, that number of consuming public bought substantial volume of her said products, and trade was unfairly diverted to her from those likewise engaged in preparing, distributing, and selling similar products or others designed, intended, and sold for use in the cure, relief, or treatment of the various