

IN THE MATTER OF
IRVING NAPP, TRADING AS NAPP'S LONGLIFE HOSIERY

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

Docket 3375. Complaint, Aug. 25, 1939—Decision, June 29, 1940

Where an individual engaged in sale and distribution of women's hosiery through personal demonstration and solicitation to purchasers in various other States and in the District of Columbia—

- (a) Represented that his said hosiery was run-proof and snag-proof, directly and through purported demonstrations, and that it would outwear all other hosiery on the market;

Facts being hosiery sold by him was neither run-proof nor snag-proof, and did not outwear other hosiery as aforesaid, but was of inferior quality as compared thereto, and demonstration made by him was not proper test, but trick or demonstration to confuse customer and cause him to believe that such hosiery would not be subject to runs or snags, through procedure employed by him of using nail file or other sharp, pointed instrument to scratch threads and punch holes in hosiery and separate threads, so as to appear snagged, or to have run, and manipulating same thereafter so as to bring hosiery back to its original condition; and

- (b) Represented that said hosiery was guaranteed to be satisfactory to purchasers, and guaranteed for 6 months against runs or holes, that he would deliver to purchaser free of charge new pairs if runs or holes appeared therein within said period from date of purchase, and that prompt adjustment would be made by him in any case where hosiery was not satisfactory or as represented;

Facts being there were instances in which after acceptance of partial and even full payment, he converted money to his own use, failed and neglected and refused to ship hosiery sold, and made no refund to customers, so that they received nothing whatsoever from him, and other instances in which he shipped and delivered to customers hosiery inferior in quality or different in color or size from that ordered, and he did not fill his guarantee to purchasers, when advised that product had been found unsatisfactory and notified that runs or holes had developed within period aforesaid, with request for new hosiery free of charge, but neglected and refused to deliver to purchasers, in accordance with guarantee, such new product and, in many cases, he did not make prompt adjustment when notified that product was not satisfactory and did not wear as represented and guaranteed, and in cases in which adjustment was made, he replaced initial hosiery with other product of inferior quality or differing in color or size;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading demonstrations, statements and representations, including those with respect to purported snag-proof, run-proof character of hosiery, constituting, by reason of serious item of expense involved in such defects, special attraction to women, were true, and into purchase of substantial quantities of his hosiery because of such erroneous and mistaken belief:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. John L. Hornor*, trial examiner.

Mr. J. W. Brookfield, Jr., 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 Irving Napp, an individual, trading as Napp's Longlife Hosiery, 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, Irving Napp, is an individual doing business under the name of Napp's Longlife Hosiery, and having his residence and principal place of business located at 107 West Seventy-fifth Street in the city of New York in the State of New York. During the past year, and for some time prior thereto, the respondent has been engaged in the sale and distribution of hosiery from his said place of business through the solicitation of orders for such hosiery from persons living in various States of the United States and in the District of Columbia. Respondent fills or pretends to fill such orders by transporting, or causing to be transported, said hosiery from his said place of business in New York to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

Respondent, at all times mentioned herein, has maintained a course of trade in commerce in said hosiery among and between various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business and in furtherance of the sale of said hosiery, the respondent has made various false and misleading statements and representations relative to said hosiery, among and typical of which are the following:

- (a) That his hosiery is run-proof and snag-proof.
- (b) That respondent guarantees said hosiery to be satisfactory to the purchasers thereof.
- (c) That respondent's hosiery is guaranteed for 6 months against runs or holes and that respondent will deliver to the purchasers, free of charge, new pairs of hosiery, if runs or holes occur in said hosiery within 6 months from the date of purchase.

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(d) That prompt adjustment will be made by respondent in any case where the hosiery is not satisfactory or does not wear as represented.

(e) That respondent's hosiery will outwear all other hosiery on the market.

PAR. 3. In truth and in fact, respondent's said hosiery is not run-proof or snag-proof. Respondent does not guarantee said hosiery to be satisfactory to the purchasers thereof. Respondent's hosiery is not guaranteed for 6 months against runs or holes and respondent does not deliver or cause to be delivered to purchasers of said hosiery a new pair of hose, free of charge, if runs or holes occur in said hosiery within 6 months from the date of purchase thereof. In many cases runs and holes have developed in said hosiery after a short period of use thereof and respondent has failed and refused to make any adjustment with the purchasers of said hosiery. Respondent's hosiery will not outwear all other hosiery on the market. Respondent's hosiery is inferior to various other brands of hosiery on the market.

The respondent has further represented to prospective purchasers, by means of a misleading demonstration consisting of pushing a sharp instrument through the hosiery, that sharp objects will not damage or cause his hosiery to run, and has further represented that only run-proof hosiery would withstand such test. In truth and in fact such manipulation is not a true test, of the wearing qualities of said hosiery or as to whether or not said hosiery is run-proof.

PAR. 4. Respondent, in addition to the use of the above and foregoing false and misleading representations and statements, and others similar thereto, in offering for sale and selling his hosiery, has used the following methods and practices, to wit:

He has filled certain orders received by him with hosiery which was of different size, color, or quality, or different in all of such respects from hosiery ordered, and in certain instances he has failed and refused to furnish hosiery after receiving orders with deposits and has failed and refused to return said deposits. He has failed and refused in many instances to adjust or correct orders which were improperly filled by him, and has failed and refused to refund money or furnish new hosiery in accordance with the terms of his purported guarantee and representations.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said hosiery, has had, and now has, the capacity and tendency to and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such false statements and

representations are true, and into the purchase of respondent's hosiery because of said erroneous and mistaken belief.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 August 25, 1939, issued and thereafter served its complaint in this proceeding upon the respondent, Irving Napp, an individual, doing business under the trade name Napp's Longlife Hosiery, charging him with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. After the issuance of said complaint, respondent not having filed answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John W. Brookfield, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by Irving Napp, the respondent, before John L. Hornor, 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 said complaint, testimony, and other evidence, brief in support of the complaint, (respondent not having filed brief, and 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. The respondent, Irving Napp, is an individual doing business under the trade name Napp's Longlife Hosiery, having his office and principal place of business at 107 West Seventy-fifth Street, New York, N. Y. Respondent, for more than 1 year prior to March 1939, was engaged in the business of the sale and distribution of women's hosiery through personal demonstration and solicitation, causing said hosiery, when sold, to be transported from the State of New York to the purchasers thereof at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia. Respondent main-

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tained a course of trade in said hosiery 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 his business as aforesaid and in the furtherance of the sale of such hosiery, respondent personally solicited prospective customers and made physical demonstrations, using a sharp nail file or other sharp instrument to prove that this hosiery was absolutely run-proof and snag-proof, thereby having wearing qualities not to be found in other hosiery. Respondent also personally made statements and representations relative to the quality and wearing qualities of said hosiery and also made certain guarantees. Among and typical of said statements, representations and guarantees so made were the following:

(a) That respondent's hosiery was run-proof and snag-proof.

(b) That respondent guaranteed said hosiery to be satisfactory to the purchasers thereof.

(c) That respondent's hosiery was guaranteed for 6 months against runs or holes and that respondent would deliver to the purchaser, free of charge, new pairs of hosiery, if runs or holes occurred in said hosiery within 6 months from the date of purchase.

(d) That prompt adjustment would be made by respondent in any case where the hosiery was not satisfactory or did not wear as represented.

(e) That respondent's hosiery would outwear all other hosiery on the market.

PAR. 3. Respondent used a nail file or other sharp pointed instrument to scratch threads, to punch holes in the hosiery and separate the threads, causing the hosiery to appear to be snagged or have a "run" in it. Then he would manipulate the hosiery so as to bring it back to its original condition. This demonstration was not a proper test to indicate or prove that the hosiery was run-proof or snag-proof, but was a trick demonstration to confuse the customer and cause the customer to believe this hosiery would not be subject to "runs" or snagging.

PAR. 4. Snags in hosiery usually start "runs." "Snags" and "runs" destroy the life and usefulness of women's hosiery, creating such a serious item of expense that women are especially attracted to hosiery which may give longer wear, due to being resistant to snags or "runs."

PAR. 5. In instances, after demonstration and solicitation, respondent secured orders, accepted partial payment, and even payment in full on such order, converted the money to his own use, and failed, neglected, and refused to ship the hosiery so sold. Respondent made no refund to the customer in such instances and the customer received

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nothing whatsoever from respondent. In other instances, respondent shipped and delivered to the customer hosiery inferior in quality or different in color or size from the hosiery ordered by the customer.

PAR. 6. The hosiery sold by respondent was not run-proof or snag-proof, nor would it outwear all other hosiery on the market, but was of inferior quality as compared with other hosiery on the market.

PAR. 7. Respondent did not fulfill his guarantee to the purchasers of his hosiery when notified by the customer that such hosiery had been found unsatisfactory. Respondent, when notified by the customer that "runs" or holes had developed in his hosiery within 6 months from the date of the purchase, and request was made that new hosiery be supplied free of charge, neglected and refused to deliver to the purchaser, free of charge, new hosiery in accordance with his guarantee. Respondent in many cases did not make prompt adjustment when notified that the hosiery was not satisfactory to the customer or did not wear as represented and guaranteed by him, and, in those instances where respondent did make adjustment, the initial hosiery was replaced with hosiery of inferior quality or hosiery of a different color or size.

PAR. 8. The use by the respondent of the aforesaid false and misleading demonstrations, statements, and representations, had the capacity and tendency to, and did, mislead and deceive a substantial number of members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading demonstrations, statements, and representations were true and into the purchase of substantial quantities of respondent's hosiery because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 the respondent, testimony and other evidence taken before John L. Horner, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief filed herein by J. W. Brookfield, Jr., counsel for the Commission (no brief having been filed on behalf of the respond-

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ent and oral argument not having been requested), 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, Irving Napp, an individual trading as Napp's Longlife Hosiery, or trading under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by means of purported demonstrations, that respondent's hosiery is snag-proof or run-proof.

2. Representing that respondent's hosiery is guaranteed to be satisfactory to the purchaser, or that respondent will make prompt adjustment or refund for any hosiery which is not satisfactory to the user or which does not wear as represented, when respondent has not in fact established, and does not in fact maintain a definite policy and practice of fulfilling such guarantee and making such adjustment or refund.

3. Representing that respondent's hosiery is guaranteed against runs or holes for any specified period of time, or that respondent will supply new hosiery to the purchaser without cost if runs or holes develop within such specified period, when respondent has not in fact established, and does not in fact maintain a definite policy and practice of fulfilling such guarantee and supplying such new hosiery.

4. Representing that respondent's hosiery is of a grade or quality different from or superior to its true grade or quality, or that such hosiery will outwear all other competitive hosiery.

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

Syllabus

IN THE MATTER OF

ROY FELLOM, DOING BUSINESS UNDER THE NAME AND
STYLE OF FELLOM PUBLISHING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3960. Complaint, Dec. 1, 1939—Decision, June 29, 1940*

Where an individual engaged under trade name in publication of his Pacific Road Builder and Engineering Review periodical, and in sale and distribution thereof to purchasers in various other States, and in deriving main source of income from conduct of his said business of publication and sale of such magazine, devoted to subject matters of interest to contractors, road builders, engineers, and buyers of construction equipment, from sale of advertising space to manufacturers and others having for sale equipment, materials, and commodities which might be of interest to subscribers and recipients of magazine involved, and in competition with others engaged in sale and distribution in commerce in the various States and the District of Columbia of periodicals devoted to the same general subject matter, and of interest to the same general class of readers, and circulated in the same general territory, and who also similarly derived main source of income from their respective businesses—

- (a) Represented in advertising matter distributed by mails or otherwise to advertisers and prospective advertisers in said magazine, located in various States, that it was circulated only to equipment buyers and had no circulation to nonbuyers, and that survey had been made of such equipment buyers in 11 States in which said magazine was principally circulated, and that in said States it was circulated to 93 percent of such buyers, and that it circulated also to 93 percent of heavy construction equipment buyers based on number thereof, and to 98 percent thereof based on volume of purchases in said 11 States;

Facts being, circulation of said periodical was not restricted exclusively to buyers of equipment, but portion of subscribers and other recipients consisted of those who were not such buyers and no accurate and dependable survey had been made by or for him as basis for figures given by him regarding its coverage of equipment buyers, and his magazine was not circulated to 93 percent of such buyers in said 11 states in which principally circulated, or to 93 percent of heavy construction buyers based on number thereof, nor to 98 percent thereof based on volume of purchases aforesaid; and

- (b) Furnished figures and material in regard to volume of circulation of his said magazine for publication and distribution to prospective advertisers, and authorized publication and distribution thereof for information of such advertisers and to induce them to place advertisements in his said magazine, and among such representations set forth that such magazine had a total average monthly net paid circulation of 5,129 and a total average monthly distribution of 6,289 for the last 6 months of 1937, and a total average monthly net paid circulation of 4,583 and a total average monthly distribution of 5,625 for the first 6 months of 1938;