

IN THE MATTER OF  
**BENJAMIN GOULD, TRADING AS PICCADILLY HOSIERY  
MILLS AND PICCADILLY 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 3774. Complaint, Apr. 26, 1939—Decision, Sept. 5, 1940*

Where an individual engaged in sale and distribution of hosiery, in commerce among the various States and in the District of Columbia—

Set forth and made use of trade name including words "Hosiery Mills," in certain letterheads, invoices, and other printed matter distributed to customers and prospective customers, and represented, through use of word "Mills" as aforesaid, that he was manufacturer of hosiery sold by him, and owned or operated mill where said product was made, notwithstanding fact he was not such a manufacturer, for dealing with whom directly there is preference on part of substantial portion of purchasing and consuming public and dealers as securing, among other things, lower prices, elimination of middleman's profits, superior products, and other advantages, and at no time owned, operated, or controlled a mill wherein his said product, which he obtained from others, was made;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into mistaken and erroneous belief that he was manufacturer of such hosiery and, by reason thereof, into purchase of substantial quantity of his said product:

*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 W. Addison*, trial examiner.

*Mr. L. E. Creel, Jr.* for the Commission.

*Mr. Charles P. Bloome*, of Philadelphia, Pa., 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 Benjamin Gould, trading as Piccadilly Hosiery Mills and Piccadilly Hosiery Co., 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, Benjamin Gould, is an individual doing business under the trade names of Piccadilly Hosiery Mills and Piccadilly Hosiery Co., with his principal office and place of business located at 1019-1021 Arch Street, in the city of Philadelphia, State of

Pennsylvania. Respondent is now, and for some time last past has been engaged in the business of selling and distributing hosiery in commerce between and among various States of the United States and in the District of Columbia. Respondent causes, and has caused, said hosiery, when sold, to be shipped from his aforesaid place of business in the State of Pennsylvania, to purchasers thereof at their respective points of location in various States of the United States, other than the State of Pennsylvania, and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, respondent, in soliciting the sale of and in selling his hosiery as above described, has caused letterheads, invoices, and other printed matter relative to said hosiery to be distributed in commerce, as commerce is defined in the Federal Trade Commission Act, to customers and prospective customers located in States other than Pennsylvania. Certain of said printed matter includes the following statement :

Piccadilly Hosiery Mills  
1019-1021 Arch Street  
Philadelphia, Pennsylvania

The use by respondent of the word "Mills" in his trade name and in the manner above described serves as a representation by respondent that he is the manufacturer of the hosiery which he sells and distributes.

PAR. 3. In truth and in fact, respondent does not own and operate or control the plant or factory wherein the hosiery which he sells and distributes is manufactured but respondent has filled and now fills orders for such articles of merchandise with hosiery which is made or manufactured in a plant or factory which he does not own, operate, or control.

PAR. 4. There is now, and has been during all the times mentioned herein, a preference on the part of a substantial portion of the purchasing and consuming public and dealers for dealing directly with a manufacturer of hosiery in the belief that more reliance can be placed on a manufacturer with reference to carrying out contracts, and that lower prices, elimination of middlemen's profits, superior products, or other advantages can thereby be obtained.

PAR. 5. The use by the respondent of the word "Mills," as hereinabove alleged, has had, and now has, the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the mistaken and erroneous belief that the respondent is the manufacturer of said hosiery and into the purchase of substantial quantities of respondent's hosiery because of such mistaken and erroneous 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 April 26, 1939, issued and subsequently served its complaint in this proceeding upon respondent Benjamin Gould, an individual trading as Piccadilly Hosiery Mills and as Piccadilly Hosiery Co., charging him with the use of unfair and deceptive acts and practices 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 the complaint were introduced by L. E. Creel, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by Charles P. Bloome, attorney in fact for respondent, before John W. Addison, trial examiner of the Commission by it theretofore duly designated, 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, brief in support of the complaint, respondent not having filed brief, and on oral argument by counsel; 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, Benjamin Gould, is an individual doing business under the trade name of Piccadilly Hosiery Co., with his principal office and place of business located at 1019-1021 Arch Street in the city of Philadelphia, Pa. From January 12, 1938 until April 5, 1938, respondent operated his business under the trade name of Piccadilly Hosiery Mills. On that date he abandoned the use of the trade name Piccadilly Hosiery Mills and substituted therefor the name Piccadilly Hosiery Co.

PAR. 2. Respondent at all times since he began business in January 1938 has been engaged in the business of selling and distributing hosiery in commerce between and among various States of the United States and in the District of Columbia. Respondent causes and has caused such hosiery, when sold, to be shipped from his place of busi-

ness in the State of Pennsylvania to purchasers thereof located at their respective points of location in various States of the United States other than the State of Pennsylvania and in the District of Columbia.

PAR. 3. In the course and conduct of his business as aforesaid, respondent in soliciting the sale of and selling hosiery as above described has caused letterheads, invoices, and other printed matter relative to such hosiery to be distributed to customers and prospective customers. Certain of such printed matter used from January 12, 1938 until April 5, 1938, included the following statement :

Piccadilly Hosiery Mills, 1019-1021 Arch Street, Philadelphia, Pennsylvania

PAR. 4. The Commission finds that the use by the respondent of the word "Mills" in his trade name as aforesaid constituted a representation that respondent was the manufacturer of the hosiery sold by him; that respondent owned or operated a mill where said hosiery was made.

Such representation by the respondent was false and misleading. The respondent has not at any time manufactured any of the hosiery sold by him. He has not at any time owned, operated, or controlled a mill wherein his said hosiery was made. Respondent obtains, and at all times mentioned herein has obtained his hosiery from other parties.

PAR. 5. The Commission further finds that there is now and has been during all the times mentioned herein a preference on the part of a substantial portion of the purchasing and consuming public and dealers for dealing directly with the manufacturer of hosiery, such preference being due in part to a belief that thereby lower prices, elimination of middleman's profits, superior products, and other advantages can be obtained.

PAR. 6. The use by respondent of said false and misleading representation had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that respondent was the manufacturer of said hosiery and into the purchase of substantial quantities of respondent's hosiery because of such mistaken and erroneous belief.

#### CONCLUSION

The acts and practices of respondent as found herein 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 on the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Addison, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by counsel for the Commission and oral arguments by L. E. Creel, Jr., counsel for the Commission, and by Charles P. Bloome, on behalf of the respondent, 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, Benjamin Gould, individually and trading as Piccadilly Hosiery Mills and as Piccadilly Hosiery Co., or trading under any other name or names, his 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 commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "mill" or "mills" as a part of his trade name, or otherwise representing that he is a manufacturer.

*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  
ROBERT A. JOHNSTON COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4104. Complaint, Apr. 23, 1940—Decision, Sept. 5, 1940*

Where a corporation engaged in manufacture of candy, and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and one of which included number of boxes or packages of candy and additional article of merchandise, together with punchboard for use in distribution of such packages to consumers under a plan, and in accordance with board's explanatory legend, by which 5-cent purchaser of chance received, in accordance with particular number secured by chance, as case might be, basket of candy, specified box thereof, 2-pound box or 1-pound box, or 25-cent package, and in accordance with which, further, last five punches in each section into which board was divided were free, person selecting last number on board received additional article of merchandise, and persons who did not punch numbers designated as above indicated, received nothing for their money—

Sold such assortments, along with said punchboards, to dealer and retailer purchasers, by latter of whom, as direct or indirect buyers thereof, assortments in question were exposed and sold to purchasing public in accordance with such sales plans or methods, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale and distribution of its candy in accordance with plans or methods above set forth, involving game of chance or sale of a chance to procure package or box of candy at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plans or methods involving game of chance or sale of a chance to win something by chance, or any other plans or methods contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate purchasers of said or like or similar candy were attracted by sales plans or methods employed by it in sale and distribution of its said products and element of chance involved therein, and were thereby induced to buy its merchandise in preference to that offered and sold by competitors aforesaid, who did not and do not use same or equivalent sales plans or methods, and with effect, through use of said plans or methods and because of said games of chance, of unfairly diverting trade from its said competitors who did not use such or equivalent plans or methods; to the substantial injury of competition in commerce:

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

*Mr. D. C. Daniel* for the Commission.

*Mr. Ira Milton Jones*, of Milwaukee, Wis., for respondent.