

Complaint

IN THE MATTER OF
THE PRIMFIT TEXTILE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4199. Complaint, July 26, 1940—Decision, Nov. 20, 1940*

Where a corporation engaged in advertising, selling and distributing men's hosiery to purchasers in various other States and in the District of Columbia; in advertising in periodicals of general circulation and in circulars and other printed or written matter distributed in commerce throughout the various States, and through other means, certain of its said hosiery, known and described as "Jerks," and sold, as aforesaid, to department stores and retailers for resale to purchasing public, and in referring in such advertising to nature of its business—

- (a) Represented that its "Jerks" hosiery was the original garterless sock, facts being such was not the case; and
- (b) Represented that it was the manufacturer of the hosiery sold by it, and that it owned, operated, or controlled a plant, factory or mill in which such hosiery was made, facts being that, while it did have a contract with a factory or mill under which certain machines were utilized by said factory exclusively for manufacture of its said "Jerks" hose and no other purpose, it did not own, operate, or control any such plant, factory or mill, but was a jobber or distributor of hosiery sold by it;

With capacity and tendency to lead prospective purchasers of its said product into mistaken and erroneous belief that its said "Jerks" hosiery was the original garterless hose, and that it was the manufacturer, as well as seller, of such hose, and owned, operated, or controlled a plant, factory, or mill for manufacture thereof, and, as aforesaid, was a manufacturer, for the purchase of the products of which directly, there is a preference on the part of a substantial portion of the purchasing public as securing them, in their belief, better prices, superior quality and other advantages not ordinarily obtainable when such products are purchased through jobbers or other middlemen:

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.

Mr. Charles S. Cox, for the Commission.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, 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 Primfit Textile Co., a corporation, has violated the provisions of said act, and it

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appearing to the Commission that a proceeding by it in respect therefore would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Primfit Textile Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Ohio, and having its principal place of business at 128-130 West Fourth Street, Cincinnati, Ohio.

PAR. 2. Respondent is now and for more than two years last past has been engaged in advertising, selling and distributing men's hosiery. Respondent causes said hosiery when sold by it to be transported from its place of business located in the State of Ohio to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio, and in the District of Columbia.

PAR. 3. Respondent's said hosiery is sold to department stores and retailers who in turn resell the same to the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said men's hosiery in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of said product, respondent, through advertisements inserted in newspapers and periodicals having a general circulation and also in circulars and other printed or written matter all of which are distributed in commerce among and between the various States of the United States, and through other means, has made misleading statements and representations to the purchasing public concerning certain of its said hosiery known and described as "Jerks" and also concerning the nature of its business. Among and typical of such misleading statements and representations so disseminated, are the following:

"Jerks"—the original garterless sock—.

"Jerks" are manufactured exclusively by The Primfit Textile Company 128-130 West Fourth Street, Cincinnati, Ohio.

Respondent in the conduct of said business, in the manner aforesaid, makes various other misleading statements and representations of similar meaning concerning its business status and the said hosiery sold by it.

PAR. 5. In the manner aforesaid, respondent represents that its "Jerks" hose is the original garterless sock; that it is the manufacturer of the hose it sells and that it owns and operates or controls a factory or mill in which its said hose are manufactured.

PAR. 6. In truth and in fact respondent's "Jerks" hose is not the original garterless sock nor is respondent a manufacturer of hosiery. Respondent neither owns, operates or controls any factory, plant or mill for the manufacture of hosiery. Respondent is a jobber and distributor of the hosiery which it sells as aforesaid.

PAR. 7. There is a substantial portion of the purchasing public which prefers to purchase direct from the manufacturer believing that in so doing they secure better prices, superior quality and other advantages not ordinarily obtainable when such products are purchased through jobbers or other middlemen.

PAR. 8. The aforesaid acts and practices of the respondent in connection with the advertising, offering for sale, sale and distribution of its said hosiery, as aforesaid, have had, and now have, the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid misleading and deceptive representations are true, and cause a substantial number of the purchasing public, because of said mistaken and erroneous belief so engendered, to purchase a substantial amount of respondent's said hosiery.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice 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 the 26th day of July 1940 issued and subsequently served its complaint in this proceeding upon said respondent, The Primfit Textile Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 16, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent by its counsel, Dinsmore, Shohl, Sawyer and Dinsmore, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, respondent having

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therein expressly waived the filing of a report upon the evidence by the Trial Examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the fact and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Primfit Textile Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and having its principal place of business at 128-130 West Fourth Street, Cincinnati, Ohio.

PAR. 2. Respondent is now and for more than two years last past has been engaged in advertising, selling, and distributing men's hosiery. Respondent causes said hosiery when sold by it to be transported from its place of business located in the State of Ohio to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio, and in the District of Columbia.

PAR. 3. Respondent's said hosiery is sold to department stores and retailers who in turn resell the same to the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said men's hosiery in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, and for the purpose of inducing the purchase of said product, respondent, through advertisements inserted in periodicals having a general circulation and also in circulars and other printed or written matter, all of which were distributed in commerce among and between the various States of the United States, and through other means has made certain misleading statements and representations to the purchasing public concerning certain of its said hosiery known and described as "Jerks" and also concerning the nature of its business. Among and typical of such statements and representations so disseminated are the following:

"Jerks"—the original garterless socks—.

"Jerks" are manufactured exclusively by The Primfit Textile Company, 128-130 West Fourth Street, Cincinnati, Ohio.

Respondent has not made said statements in advertising from April 1940, to September 11, 1940, the date of said stipulation filed herein.

PAR. 5. In the manner aforesaid, respondent represents that its "Jerks" hosiery is the original garterless sock; that it is the manu-

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facturer of the hosiery it sells; and that it owns, operates or controls a plant, factory or mill in which its said hosiery is manufactured.

PAR. 6. Respondent's "Jerks" hose is not the original garterless sock. Respondent does not own or operate any plant, factory or mill for the manufacture of hosiery and does not control any such plant, factory or mill. Respondent does have a contract with a factory or mill under which certain machines are utilized by said factory exclusively for the manufacture of respondent's "Jerks" hose and for no other purpose. Respondent is a jobber and distributor of the hosiery which it sells.

PAR. 7. There is a substantial portion of the purchasing public which prefers to purchase directly from the manufacturer believing that in so doing they secure better prices, superior quality, and other advantages not ordinarily obtainable when such products are purchased through jobbers or other middlemen.

PAR. 8. Said aforesaid acts and practices of the respondent in connection with the advertising and sale of its said hosiery as above referred to had the capacity and tendency to lead prospective purchasers thereof into the mistaken and erroneous belief that the said "Jerks" hose was the original garterless hose, and that the respondent was the manufacturer as well as seller of the "Jerks" hose and owned, operated, or controlled a plant, factory or mill for manufacturing said hose.

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, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, 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, The Primfit Textile Co., its officers, representatives, agents, and employees, directly or through any

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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:

1. From representing, directly or indirectly, that its hosiery designated as "Jerks," or the same or similar hosiery designated by any other name, is the original garterless sock.

2. From representing, directly or indirectly, that it is the manufacturer of the hosiery it sells unless and until it actually owns and operates or directly and absolutely controls a manufacturing plant, factory or mill wherein such hosiery is manufactured.

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.

Syllabus

IN THE MATTER OF

PHIL J. BLIFFERT, WALTER J. MANHARDT, TRADING AS
CAPITOL BUILDING SUPPLY COMPANY, WAUWATOSA
FUEL & SUPPLY COMPANY, ALSO TRADING AS WISCON-
SIN FACE BRICK & SUPPLY COMPANY, ETC., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3631. Complaint, Oct. 18, 1938—Decision, Nov. 23, 1940*

Where an individual, since deceased, ostensibly engaged in business in the city of Milwaukee as a so-called building supply dealers' consultant and adviser, and a number of Milwaukee dealers in building supplies, such as, among others, cement, laths, plaster, clay products, pipe, and sand and gravel, and who (1) did 90 percent of the building supply business in county involved, and in which county 60 percent of such supplies therein, and including, more particularly, plaster, cement, lime, and metal lath, were purchased by said dealers and others engaged in similar business and transported from producers and manufacturers and sellers thereof located outside of the State, and, as a group or class, engaged in manufacture and sale of such supplies, including lime, cement, and other building materials, and in selling and shipping large quantities thereof to purchasers in State of Wisconsin from other States, in substantial competition with one another in such manufacture and sale to dealers in question and to competitors of such dealers, and who (2) engaged in business of buying commodities in question, as above noted, and in selling same to various governmental, State, county, and city purchasing agencies and the general trade, and, except to the extent competition in purchase and sale of such products had been restrained, lessened, injured, and suppressed by plans, understandings, agreements, combinations, and conspiracies below set forth, in substantial competition, in purchase and sale involved, with each other and with other dealers in building material supplies—

With intent of fixing prices, discounts, and conditions of sale for building supplies in county in question, and including sale of such supplies made under city, county and State bids—

- (a) Entered into uniform contracts under which dealers employed said individual as consultant in and about the conduct of their respective businesses, relating to sales and trade practices, so that dealer might "be assured of selling its commodities at fair and reasonable prices," and under which dealers agreed to file in writing with such individual all of their respective selling prices for building materials for delivery in county in question, and individual undertook to audit and check all selling prices filed with him as to various costs, and to advise dealer as to correctness thereof, so that it might be assured that its sales should not be made for less than cost, and dealer further undertook to advise such individual of any changes in costs and of advances or reductions in prices of its commodities and to file same with individual not less than 48 hours before quoting such changes in prices to trade, and to sell its commodities only at prices thus filed