

IN THE MATTER OF

LOGAN-CACHE KNITTING MILLS

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

Docket 4075. Complaint, Mar. 30, 1940—Decision, Mar. 9, 1942

Where a corporation chartered in 1926 and engaged in the manufacture and interstate sale and distribution, through house-to-house solicitors, and through its retail stores, of women's knitted suits, dresses and sweaters, made to the individual's measurements, and in thus selling such products through its subsidiary organized in 1934 as Logan Sportswear Co., under registered trade name "Loganknit," to which it had given wide publicity and had featured in periodical and radio advertising campaigns at large expense, so that said trade name "Loganknit" had become widely known, particularly in the western States, and its knitted garments become known to the public as "Loganknits"; and

Thereafter a competitive corporation, organized in 1937, and engaged as Logan-Cache Knitting Mills, in soliciting orders through house-to-house canvassers for women's knitted garments made to the individual's measure—

- (a) Passed off as "Loganknits" its said products, and represented that it was the manufacturer of "Loganknits," through direct representations of its salesmen and through artifice and use of half-truths and other misleading and deceptive statements and expressions;

With result that in numerous instances members of the public purchased its said products in the mistaken belief that they were purchasing the genuine products thus named; and

- (b) Used such expressions in advertising and on its letterheads and otherwise as "Established in 1890," "The Old Reliable Since 1890," and "Pioneer Knitters of the West";

The facts being that its founder in 1935 purchased the assets of the Cache Knitting Works—which, while organized in 1890, with place of business in Logan, Utah, had discontinued operations in 1932—and operated such business under said name until its dissolution in 1937, when it organized the corporation here in question, which facts did not support its contention that it was the successor of said Cache Knitting Works and thus entitled to represent itself as having been established in 1890 or being the pioneer knitters of the West; individual acquiring aforesaid assets was in no way connected with said older concern which, as aforesaid, had not been engaged in active business for three or four years, so that in no event could corporation here involved be considered as having started business earlier than 1935; a number of knitting mills were established and in active operation in Logan prior to that time; and it was not, as claimed, an old, established concern such as preferred by a substantial portion of the purchasing public as, in its belief, offering purchasers certain definite advantages;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity of its products and its

business status, and to cause purchase of its products by reason thereof, whereby substantial trade was diverted to it from its competitors:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. W. M. King and *Mr. D. E. Hoopingarner* for the Commission.

Mr. Melvin C. Harris and *Mr. Ernest T. Young*, of Logan, Utah, 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 Logan-Cache Knitting Mills, a corporation, herein referred to as respondent, has violated the provisions of 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. The respondent, Logan-Cache Knitting Mills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located in the city of Logan, State of Utah.

PAR. 2. Respondent corporation was chartered in December 1937, and is the successor of Logan Woolen Mills, a Utah corporation chartered in April 1937. Respondent is now, and has been, since the date of its original incorporation, engaged in the manufacture, sale and distribution of ladies' knitted suits, dresses, and sweaters, and in a lesser degree, in the sale and distribution of underwear, woolen shirts, cassocks, blankets, and various other kinds of merchandise. Little advertising is done by respondent, sales being solicited and made by salesmen who canvass from house to house, taking orders for merchandise direct from the purchasing public. For the most part, respondent's garments are made for particular persons from individual measurements made by its salesmen. Orders taken by such salesmen are mailed to respondent and such garments are made in its factory in Logan, Utah, and when completed are sent direct by parcel post to the purchasers located in various States of the United States. There is now, and has been at all times since the organization of respondent, a constant current of trade and commerce in said merchandise between and among various States of the United States.

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PAR. 3. In the course and conduct of its said business respondent is now, and has been since its organization, in substantial competition with other corporations, firms and individuals, likewise engaged in the business of selling and distributing similar merchandise, in commerce, among and between the various States of the United States.

PAR. 4. Among the competitors of respondent referred to in paragraph 3 hereof is the Logan Knitting Mills & Garment Co., a Utah corporation, which has its factory and principal place of business also located at Logan, Utah. Said corporation was originally chartered under the name of Logan Garment Co. in 1926; in July 1937, the corporate name was changed to Logan Garment and Knitting Co. and subsequently in the same year was again changed to Logan Knitting Mills & Garment Co., and since that time has been operating under said last mentioned name. Said company sells, generally speaking, the same kinds of merchandise as respondent and in the same manner; that is, through salesmen who canvass from house to house, taking orders upon individual measurements of purchasers. In addition, this company sells its merchandise through a chain of retail stores owned and operated by it, some of which are located in States other than the State of Utah. By means of extensive radio advertising, by insertion of large quantities of advertising matter in newspapers and periodicals, by the distribution of numerous pamphlets and booklets, and by the general excellency of its merchandise, said company has built up and maintained a wide reputation and extensive good will among purchasers of its merchandise and said merchandise has become and is well and favorably known to the public and particularly to the public in the western States of the United States.

PAR. 5. Logan Sportswear Co. is a corporation organized in 1934 under the laws of the State of Utah and is a subsidiary of the said Logan Knitting Mills & Garment Co. On December 31, 1935, the said Logan Sportswear Co. registered with the United States Patent Office the trade-mark "Loganknits" and thereupon granted to the Logan Knitting Mills & Garment Co. the exclusive right to use said trade-mark in labeling, advertising, and identifying its merchandise sold in its direct mail order business throughout the United States. Since the time of acquiring the right to use the said trade-mark, the said Logan Knitting Mills & Garment Co. has featured said trade-mark "Loganknits" in all forms of its advertising and said trade-mark has become definitely associated in the minds of the general public with said company's merchandise.

PAR. 6. The name adopted and used by the respondent, Logan-Cache Knitting Mills, so closely imitates and simulates the name of

its competitor, Logan Knitting Mills & Garment Co., and its trade-mark "Loganknits," that its use confuses, misleads, and deceives purchasers and prospective purchasers of knitted wear into the erroneous and mistaken belief that the respondent is the manufacturer of the well and favorably known line of knitted wear sold under the trade-mark "Loganknits" and that by purchasing the knitted wear of respondent they are securing the product of Logan Knitting Mills & Garment Co. Respondent has furthered the mistaken and erroneous belief, created by the use of its corporate name, by inserting in advertising media circulated among prospective purchasers of knitted wear statements containing the words "Logan Knits" in simulation of said trade-mark. Typical of these advertisements is the following:

THE LOGAN CACHE KNITTING MILLS

Manufacturers Logan Knits

Established in 1890

Logan, Utah.

Manufacturers of exclusive styles in ladies suits and dresses. Write for illustrations and sample materials.

Good Territory Open for Aggressive Men with Sales Ability.

Respondent has also furthered this erroneous and mistaken belief through representations made by its salesmen when calling on prospective purchasers of its products. Respondent's salesmen, both by direct and positive statements and by artifice and concealment of the truth, represent that they are selling products manufactured by Logan Knitting Mills & Garment Co., and that the products offered for sale by them are genuine "Loganknit" manufactured by said company.

PAR. 7. There exists in the minds of a substantial portion of the purchasing public a well-founded belief that certain definite advantages are afforded a purchaser of products and merchandise from an old established concern. With the intent and purpose of capitalizing and taking advantage of this belief, respondent by means of letters written to customers and prospective customers, by the use of letter-heads, newspaper advertisements, and by labels attached to certain of its merchandise falsely represents that it was established in 1890; that it is "The Old Reliable"; "The Old Reliable Since 1890" and that it is "Pioneer Knitters of the West." In truth and in fact, all of said statements and representations are false and untrue, since the business of respondent was not started until 1936 and the company not incorporated until 1937, and many other knitting mills were organized and engaged in business prior to the time respondent was organized and so engaged.

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PAR. 8. The acts and practices of the respondent in adopting and using the name "Logan-Cache Knitting Mills" and in making and using the statements and representations in connection with the sale and distribution of its products in said commerce as aforesaid have the tendency and capacity to and do cause many members of the public to purchase its said products under the mistaken and erroneous belief that respondent's said products are the well and favorably known products of Logan Knitting Mills & Garment Co., and under the mistaken and erroneous belief that they are dealing with a well-known and long-established firm, whereby trade in said commerce is unfairly diverted to the respondent from its competitors who do not engage in such acts and practices in connection with the sale and distribution of their respective products in said commerce.

PAR. 9. The aforesaid acts, practices, and representations of the respondent as herein alleged are all to the prejudice and injury of the public and respondent's competitors and constitute unfair methods of competition in commerce and 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 March 30, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Logan-Cache Knitting Mills, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by attorneys for the Commission, and in opposition to the allegations of the complaint by the attorney for the respondent, before Randolph Preston, a trial 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 complaint, the answer thereto, testimony and other evidence, and briefs in support of and in opposition to the complaint (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, Logan-Cache Knitting Mills, is a corporation organized and doing business under the laws of the State of Utah, with its principal office and place of business located in the city of Logan, Utah.

PAR. 2. Respondent is engaged in the manufacture and in the sale and distribution of women's knitted wear, including suits, dresses, and sweaters. Sales are solicited by respondent through traveling salesmen who make house to house calls on prospective purchasers. Orders obtained by such salesmen are mailed to respondent, and the garments ordered are made to order by respondent from individual measurements taken by such salesmen. When the garments are completed by respondent they are shipped from respondent's factory in Logan, Utah, direct to the purchasers, many of whom are located in various States of the United States other than the State of Utah. Respondent maintains and has maintained a course of trade in its products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of its business respondent is, and has been, in substantial competition with other corporations and with firms and individuals engaged in the sale and distribution of similar merchandise in commerce among and between the various States of the United States.

PAR. 4. Among such competitors of respondent is the Logan Knitting Mills & Garment Co., a Utah corporation, which has its factory and principal place of business located in Logan, Utah. This corporation was originally chartered under the name of Logan Garment Co. in 1926 and operated under this name until about July 7, 1937, when its name was changed to Logan Garment & Knitting Co. On August 9, 1937, the name of the corporation was again changed to Logan Knitting Mills & Garment Co., and the corporation has continued to operate under that name down to the present time. This company manufactures and sells the same type of merchandise as that sold by respondent and solicits its sales in the same manner, that is, through salesmen who canvass from house to house and take orders upon individual measurements of purchasers. In addition, however, to this sales method, the company also operates a number of retail stores, some of which are located in States other than the State of Utah.

The Logan Knitting Mills & Garment Co. has a subsidiary known as Logan Sportswear Co., a corporation organized in 1934 under the laws of the State of Utah. In December 1935 the Logan Sportswear Co.

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registered with the United States Patent Office the trade name "Logan-knit" and granted to the parent corporation, Logan Knitting Mills & Garment Co., the right to use this trade name in labeling, advertising and identifying the knitted wear sold by the Logan Knitting Mills & Garment Co.

PAR. 5. In 1890 a corporation known as Cache Knitting Works was organized under the laws of the State of Utah, and this corporation had its place of business in Logan, Utah. The corporation continued in business until 1932, when it discontinued operations. In 1935 E. J. Wilson, the founder of the respondent corporation, purchased the assets of the Cache Knitting Works and operated the business under that name until 1937. Upon the dissolution of the corporation in 1937, Wilson organized a new corporation known as Logan Knitting Mills, the name of which was changed a few months later to Logan Woolen Mills, and shortly thereafter again changed to Logan-Cache Knitting Mills, under which name respondent is now operating.

PAR. 6. Upon acquiring the right to the use of the trade name "Loganknit," the Logan Knitting Mills & Garment Co. proceeded to give wide publicity to the name and to feature it in the company's advertising campaigns. Large sums have been expended by the company for advertising purposes, the advertising having been conducted by means of radio broadcasts and also by means of advertisements inserted in periodicals having wide circulation throughout the United States. As a result of these advertising campaigns the trade name "Loganknit" has become widely known throughout certain sections of the United States, particularly in the western States, and has become associated in the minds of many members of the public with the knitted garments manufactured and sold by the Logan Knitting Mills & Garment Co. These garments are known to such portion of the public as "Loganknits."

PAR. 7. In the course and conduct of its business and for the purpose of furthering the sale of its products, the respondent, Logan-Cache Knitting Mills, has engaged in the practice of passing off its own products as Loganknits and of representing itself as the manufacturer of Loganknits. In a substantial number of instances respondent's salesmen have made the direct representation to prospective purchasers that the products offered for sale by such salesmen were Loganknits. In many other instances, while there was no direct representation to this effect, the respondent's salesmen have by artifice and the use of half-truths and the other misleading and deceptive statements and expressions implied that respondent's products were Loganknits. The record discloses numerous instances in which members of the public have purchased respondent's products under the erroneous and mis-

taken belief, caused or contributed to by respondent through its salesmen, that they were purchasing Loganknits.

PAR. 8. The respondent has also engaged in the practice of misrepresenting its business status, such representations being made through the use by respondent in its advertising and on its letterheads and otherwise of the legends, "Established in 1890," "The Old Reliable Since 1890," and "Pioneer Knitters of the West." Respondent contends that it is the successor of the Cache Knitting Works and that as such successor it is entitled to make such representations. While as stated above, E. J. Wilson, the founder of the respondent corporation, did in 1935 acquire the assets of the Cache Knitting Works, the respondent is not in fact the successor of such concern in any such sense as would entitle it to represent itself as having been established in 1890 or as being the pioneer knitters of the West. At the time E. J. Wilson acquired the assets of the Cache Knitting Works he was not connected in any way with such concern but was connected with an entirely separate business organization. Moreover, at the time Wilson acquired the assets of the Cache Knitting Works this concern was not engaged in active business operations and had not been so engaged for some 3 or 4 years. In no event can the respondent corporation be considered as having started business earlier than 1935. There are a number of knitting mills in Logan, Utah, which were established and were in active operation prior to the time at which respondent was organized.

There exists in the minds of a substantial portion of the purchasing public a belief that certain definite advantages are to be obtained by purchasing merchandise from an old established concern, and there is a preference on the part of such members of the public for purchasing from such concerns.

PAR. 9. The Commission finds further that the acts and practices of the respondent as herein described have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity of respondent's products and with respect to respondent's business status, and the tendency and capacity to cause such portion of the public to purchase respondent's products as a result of the erroneous and mistaken belief so engendered. In consequence thereof, substantial trade has been diverted to the respondent from its competitors.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competi-

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tors, and constitute unfair methods of competition in commerce and 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 respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, and briefs in support of and in opposition to the complaint (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Logan-Cache Knitting Mills, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondent's knitted wear in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Loganknit" or "Loganknits" to designate or describe respondent's products, or otherwise representing, directly or by implication, that respondent's products are "Loganknits" or are the products of the Logan Knitting Mills & Garment Co., of Logan, Utah;

2. Representing, directly or indirectly, that respondent is the same company as said Logan Knitting Mills & Garment Co., or that respondent is in any manner associated or connected with said company;

3. Representing, directly or indirectly, that respondent was established in 1890, or that it is the "Pioneer Knitters of the West," or that respondent was organized or established at any time prior to 1935.

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

HEROLIN COMPANY, INC., AND BERT H. RUBIN

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

Docket 4399. Complaint, Dec. 4, 1940—Decision, Mar. 9, 1942

Where a corporation and its president-treasurer, who administered its business policies, engaged in interstate sale and distribution of various cosmetics and medicinal preparations, toilet articles, and related items, and also of certain "curios" and "charms"; by advertisements in newspapers, circulars, leaflets, pamphlets, price lists, and other media—

- (a) Represented that their "Original Herolin Beautifier Hair Dressing" (formerly designated as "Herolin Double-Strength Quinine Hair Grower" and otherwise), penetrated to the roots of the hair, revived hair cells and caused hair to grow, furnish necessary oils and nourishment to hair, and would prevent dandruff and other scalp ailments, and that their "Hair Gloss and Temple Oil" combined the properties of hair grower, brilliantine, and pressing oil, promoted the growth of hair around the temples and prevented burning hair or scalp with hot combs and irons;

The facts being former was nothing more than a perfumed emollient, the quinine and betanaphthol contents of which were too small to have any appreciable counterirritant or stimulant effect; and both preparations were without therapeutic value in treatment of hair or scalp and would not accomplish results claimed therefor;

- (b) Represented that their "Tetter Salve" would clear up all common skin or scalp of all infections or diseases or stop falling hair;

The facts being that while preparation in question, in some cases, might be effective in clearing the skin of ringworm and some forms of itch, it would not cure eczema, tetter, or other skin ailments due to systemic factors, it had no therapeutic value in treatment of dandruff in excess of softening dandruff scales and facilitating removal thereof, and would not clear the scalp of all infections or diseases or stop falling hair;

- (c) Represented that their "Nayko Tablets" would relieve menstrual pains, and cure and relieve headaches, backaches, nausea, neuralgia, colds, and similar ailments; and that their "Herolin Female Tonic" was a uterine and sedative preparation that would cure female irregularity, and relieve suppressed, painful, and excessive menstruation and other similar female disorders;

The facts being that former preparation had little, if any, therapeutic value and in dosage recommended was incapable of any sedative action; and, while the latter had the therapeutic properties of a laxative and an alcoholic depressant, neither would cure or relieve the conditions claimed;

- (d) Represented that their "Moonbeam Pills" would relieve constipation, cure sick headaches and nausea, and were very beneficial in the treatment of disorders of the liver; and that their "Moonbeam Tonic" would cure constipation, headache, biliousness, dizziness, and back pains, and would correct and cure most systemic disorders of the stomach, kidneys, and liver;