(258 U. S. 483)

FEDERAL TRADE COMMISSION v. WINSTED HOSIERY CO.

(Argued March 13 and 14, 1922. Decided April 24, 1922.)

No. 333.

1. **Trade-marks and trade-names and unfair competition ⟸80½, New, vol. 8A Key-No. Series—False labels constitute unfair competition against those using true labels.**

Where labels used by a manufacturer of underwear, designating the goods, which were made of wool mixed with cotton or silk, as "natural merino," "gray wool," "natural wool," "natural worsted," or "Australian wool," were false and misleading, and the Trade Commission found on sufficient evidence that dealers and consumers were deceived thereby, the use of such labels amounted to unfair competition against other manufacturers who correctly labeled their goods when they were not made of all wool, and use of such labels can be prevented by the Commission under Act Sept. 26, 1914, § 5 (Comp. St. § 8836e).

2. **Trade-marks and trade-names and unfair competition ⟸80½, New, vol. 8A Key-No. Series—Fact that misdescription is so common dealers do not accept labels is no defense.**

The fact that misrepresentation and misdescription has become so common in the knit underwear trade that most dealers no longer accept labels at their face value does not prevent the use of false labels being an unfair method of competition against manufacturers who use true labels.

3. **Words and phrases—"Australian wool."**

"Australian wool" means a distinct commodity, a fine grade of wool grown in Australia.

4. **Words and phrases—"Merino wool."**

"Merino," as applied to wool, means primarily and popularly a fine long staple wool, which commands the highest price.

[Ed. Note.—For other definitions, see Words and Phrases, Second Series, Merino Wool.]

5. **Words and phrases—"Wool."**

The word "wool," when used as an adjective, means made of wool.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Wool.]

6. **Words and phrases—"Worsted."**

"Worsted" means primarily and popularly a yarn or fabric made wholly of wool.

Mr. Justice McReynolds dissenting.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Complaint by the Federal Trade Commission against Winsted Hosiery Company. An order by the Commission, directing the company to cease from using certain labels or brands, was set aside by the Circuit Court of Appeals (272 Fed. 957), and the Federal Trade Commission brings certiorari. Judgment of the Circuit Court of Appeals reversed.

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*Messrs. Solicitor General James M. Beck and Adrien F. Busick, both of Washington, D. C., for petitioner.

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*Messrs. Melville J. France and Henry P. Molloy, both of New York City, for respondent.

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*Messrs. Frank F. Reed and Edward S. Rogers, both of Chicago, Ill., representing The Armstrong Cork Company, George W. Blabon Company, American Linoleum Manufacturing Company, Nairn Linoleum Company, and Cook's Linoleum Company, Manufacturers of Linoleum.

Mr. Morten Q. Macdonald, of Washington, D. C., representing Paint Manufacturers Association of the United States and National Varnish Manufacturers Association.

Mr. Walter Gordon Merritt, of New York City, representing The Silk Association of America, amici curiæ.

Mr. Justice BRANDEIS delivered the opinion of the Court.

The Winsted Hosiery Company has for many years manufactured underwear which it sells to retailers throughout the United States. It brands or labels the cartons in which the underwear is sold, as "Natural Merino," "Gray Wool," "Natural Wool," "Natural Worsted," or "Australian Wool." None of this underwear is all wool. Much of it contains only a small percentage of wool; some as little as 10 per cent. The Federal Trade Commission instituted a complaint under section 5 of the Act of September 26, 1914, c. 311, 38 Stat. 717, 719 (Comp. St. § 8836e), and called upon the company to show cause why use of these brands and labels alleged to be false and deceptive should not be discontinued. After appropriate proceedings an order was issued which, as later modified, directed the company to—

"cease and desist from employing or using as labels or brands on underwear or other knit goods not composed wholly of wool, or on the wrappers, boxes or other containers in which they are delivered to customers, the words 'Merino,' 'Wool,' or 'Worsted,' alone or in combination with any other word or words, unless accompanied by a word or words designating the substance, fiber or material other than wool of which the garments are composed in part (e. g., 'Merino, Wool and Cotton'; 'Wool and Cotton'; 'Worsted, Wool and Cotton'; 'Wool, Cotton, and Silk') or by a word or words otherwise clearly indicating that such underwear or other goods is not made wholly of wool (e. g., part wool)."

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*A petition for review of this order was filed by the company in the United States Circuit Court of Appeals for the Second Circuit. The prayer that the order be set aside was granted; and a decree to that effect was entered.[1] That court said:

[1] The original order of the Commission was based on findings which rested upon an agreed statement of facts. The petition for review urged, among other things, that the agreed statement did not support the findings. Thereupon the Commission moved

"Conscientious manufacturers may prefer not to use a label which is capable of misleading, and it may be that it will be desirable to prevent the use of the particular labels, but it is in our opinion not within the province of the Federal Trade Commission to do so." 272 Fed. 957, 961.

The case is here on writ of certiorari. 256 U. S. 688, 41 Sup. Ct. 625, 65 L. Ed. 1172.

The order of the Commission rests upon findings of fact; and these upon evidence which fills 350 pages of the printed record. Section 5 of the act makes the Commission's findings conclusive as to the facts, if supported by evidence.

[3-6] The findings here involved are clear, specific and comprehensive: The word "Merino," as applied to wool, "means primarily and popularly" a fine long-staple wool, which commands the highest price. The words "Australian Wool" mean a distinct commodity, a fine grade of wool grown in Australia. The word "wool" when used as an adjective means made of wool. The word "worsted" means primarily and popularly a yarn or fabric made wholly of wool. A substantial part of the consuming public, and also some buyers for retailers and sales

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*people, understand the words "Merino," "Natural Merino," "Gray Merino," "Natural Wool," "Gray Wool," "Australian Wool" and "Natural Worsted," as applied to underwear, to mean that the underwear is all wool. By means of the labels and brands of the Winsted Company bearing such words, part of the public is misled into selling or into buying as all wool, underwear which in fact is in large part cotton. And these brands and labels tend to aid and encourage the representations of unscrupulous retailers and their salesmen who knowingly sell to their customers as all wool, underwear which is largely composed of cotton. Knit underwear made wholly of wool, has for many years been widely manufactured and sold in this country and constitutes a substantial part of all knit underwear dealt in. It is sold under various labels or brands, including "Wool," "All Wool," "Natural Wool" and "Pure Wool," and also under other labels which do not contain any words descriptive of the composition of the article. Knit underwear made of cotton and wool is also used in this country by some manufacturers who market it without any label or marking describing the material or fibers of which it is composed, and by some who market it under labels bearing the words "Cotton and Wool" or "Part Wool." The Winsted Company's product, labeled and branded as above stated, is being sold in competition with such all wool underwear, and such cotton and wool underwear.

That these findings of fact are supported by evidence cannot be doubted. But it is contended that the method of competition complained of is not unfair within the meaning of the act, because labels such as the Winsted Company employs, and particularly those bearing the word "Merino," have long been established in the trade and are generally understood by it as indicating goods partly of cotton; that the trade is not deceived by them; that there was no unfair

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competition for which another *manufacturer of underwear could maintain a suit against the Winsted Company; and that even if consumers are misled because they do not understand the trade signification of the label or because some retailers deliberately deceive them as to its meaning, the result is in no way legally connected with unfair competition.

[1] This argument appears to have prevailed with the Court of Appeals; but it is unsound. The labels in question are literally false, and, except those which bear the word "Merino," are palpably so. All are, as the Commission found, calculated to deceive and do in fact deceive a substantial portion of the purchasing public. That deception is due primarily to the words of the labels, and not to deliberate deception by the retailers from whom the consumer purchases. While it is true that a secondary meaning of the word "Merino" is shown, it is not a meaning so thoroughly established that the description which the label carries has ceased to deceive the public; for even buyers for retailers, and sales people, are found to have been misled. The facts show that it is to the interest of the public that a proceeding to stop the practice be brought. And they show also that the practice constitutes an unfair method of competition as against manufacturers of all wool knit underwear and as against those manufacturers of mixed wool and cotton underwear who brand their product truthfully. For when misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods. That these honest manufacturers might protect their trade by also resorting to deceptive labels is no defense to this proceeding brought against the Winsted Company in the public interest.

[2] The fact that misrepresentation and misdescription have become so common in the knit underwear trade that most dealers no longer accept labels at their face value does not prevent their use being an unfair

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method of competition. *A method inherently

in the Court of Appeals that the case be remanded to the Commission for additional evidence as provided in the fourth paragraph of section 5 of the act. Under leave so granted the evidence was taken; and modified findings of fact were made. The modified order was based on these findings. It is this modified order which was set aside by the Court of Appeals; and we have no occasion to consider the original order or the proceedings which led up to it.

unfair does not cease to be so because those competed against have become aware of the wrongful practice. Nor does it cease to be unfair because the falsity of the manufacturer's representation has become so well known to the trade that dealers, as distinguished from consumers, are no longer deceived. The honest manufacturer's business may suffer, not merely through a competitor's deceiving his direct customer, the retailer, but also through the competitor's putting into the hands of the retailer an unlawful instrument, which enables the retailer to increase his own sales of the dishonest goods, thereby lessening the market for the honest product. That a person is a wrongdoer who so furnishes another with the means of consummating a fraud has long been a part of the law of unfair competition.[2] And trade-marks which deceive the public are denied protection although members of the trade are not misled thereby.[3] As a substantial part of the public was still misled by the use of the labels which the Winsted Company employed, the public had an interest in stopping the practice as wrongful; and since the business of its trade rivals who marked their goods truthfully was necessarily affected by that practice, the Commission was justified in its conclusion that the practice constituted an unfair method of competition; and it was authorized to order that the practice be discontinued.

Reversed.

Mr. Justice McREYNOLDS dissents.

(258 U. S. 549)

SLOAN SHIPYARDS CORPORATION et al. v. UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION et al. ASTORIA MARINE IRON WORKS v. UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION. UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION v. WOOD.

(Argued March 15 and 16, 1922. Decided May 1, 1922.)

Nos. 308, 376 and 526.

1. Courts ⟸426 — United States ⟸125—Government ownership of all stock of Emergency Fleet Corporation does not affect its legal position so as to require suits to be brought in the Court of Claims.

The Shipping Act of September 7, 1916 (Comp. St. § 8146a et seq.), giving the Shipping Board power to form a corporation under the laws of the District of Columbia, contemplated a corporation in which private persons might be stockholders, and which was to be formed like any business corporation with capacity to sue and be sued, and the fact that the United States took all the stock of the corporation did not affect the legal position of the company, so as to require suits against it to be brought in the Court of Claims.

2. United States ⟸125—Authorized agent is not exempt from liability for his acts.

The exemption of the sovereign from liability to suit does not extend to an agent to whom authority has been delegated by the President merely because he is such agent, whether the agent be an individual or a corporation which in law is a person, so that such agent is answerable for his own acts unless protected by some constitutional rule of law.

3. Courts ⟸426—United States ⟸125—Special remedies for property seized by Fleet Corporation do not exempt it from general liability for wrongful acts.

The provision of Act April 22, 1918, § 3 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, § 3115½16dd), and Act July 18, 1918, § 13 (Comp. St. Ann. Supp. 1919, § 3115½16j), prescribing the method for obtaining compensation for a plant taken by the President under Act June 15, 1917 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, § 3115½16d), and requiring resort to the Court of Claims if the claim exceeds $10,000, does not exempt the Emergency Fleet Corporation from liability to an ordinary suit to recover for property alleged to have been wrongfully seized by it.

4. Corporations ⟸499—Code authorizing suits in District of Columbia by corporations formed thereunder gives such corporations no special footing.

The provision of Code District of Columbia, § 607, that corporations formed under it shall be capable of suing and being sued in any court in the district does not put district corporations on a different footing from those formed under the laws of the states.

5. United States ⟸125—Statement in contract with Fleet Corporation that corporation was representing United States does not affect jurisdiction.

A statement in a contract made by the Emergency Fleet Corporation that it was made by the corporation as representing the United States is immaterial in determining the liability of the corporation to be sued with reference to that contract.

6. United States ⟸125 — Transfer of Fleet Corporation's property to Shipping Board does not defeat jurisdiction of courts over corporation.

The transfer of all the property of the Fleet Corporation to the United States Shipping Board by Act June 5, 1920, § 4, may affect the value of a remedy afforded by suit against the corporation, but does not affect the jurisdiction of the courts to entertain such suit.

7. Removal of causes ⟸19(8)—Suits in state courts against Fleet Corporation are removable.

Any suit begun in a state court against the Emergency Fleet Corporation can be removed to the courts of the United States and thereafter be subject to review by the Supreme Court since Act Jan. 28, 1915, § 5 (Comp. St.

[2] Von Mumm v. Frash (C. C.) 56 Fed. 830; Coca-Cola Co. v. Gay-Ola Co., 200 Fed. 720, 722, 119 C. C. A. 164; New England Awl & Needle Co. v. Marlborough Awl & Needle Co., 168 Mass. 154, 155, 46 N. E. 386, 60 Am. St. Rep. 377.

[3] Manhattan Medicine Co. v. Wood, 108 U. S. 218, 2 Sup. Ct. 436, 27 L. Ed. 706; Worden v. California Fig Syrup Co., 187 U. S. 516, 538, 23 Sup. Ct. 161, 47 L. Ed. 282.