

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 2.—October 20, 1916.

SYLLABUS.

Where the manufacturer of a textile product containing no genuine silk, used in the labeling, advertising, and sale thereof, such descriptive words as "silk" or "silks," "Kapock Silk" or "Kapock Silks," "Sun-fast Silk" and "Tub-fast Silk," with the result that purchasers were misled into the belief that such goods were made entirely of silk, and that competitors making genuine silk goods were injured, although no intention on the part of the manufacturer to cause deception was shown:

Held, That such labeling, advertising, and sales, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe that A. Theo. Abbott & Co. have been and are using unfair methods of competition in commerce, in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect as follows:

1. That the said A. Theo. Abbott & Co., hereinafter called the respondent, is a corporation, having its principal office and place of business in the city of Philadelphia, in the State of Pennsylvania, and engaged in commerce among the several States in the manufacture, advertisement, sale, and distribution of textile goods used primarily for tapestries and interior decorations.

2. That the said respondent has from time to time manufactured, advertised, sold, and distributed, and still is manufacturing, advertising, selling, and distributing, in interstate commerce, large quantities of a cotton product or material under a trade-mark or trade name substantially as follows:

Guaranteed
KAPOCK
Sun Fast Silks
Reg. Ser. No. 72567
Is not a Worm Silk

The words "Is not a worm silk" are printed in minute inconspicuous letters.

3. That said trade-mark or trade name is printed on tickets attached to said merchandise and there is printed matter on the back of said tickets in the following words:

THE WHITE BASTING THREAD
on the reverse side of Kapock Silk is a
patented trade-mark for your protection
(which can be easily removed without
damage to goods), and is your
GUARANTEE

that we'll refund your money or replace
the goods, if Kapock Silks fade in either
sun or water. Kapock Silks are sun-fast
and tub-fast.

A. THEO. ABBOTT & CO.
Philadelphia, Pa.

4. That the word "silk," when applied to textile goods, both in the technical and popular usage, has a precise and exact meaning, and is only accurately and properly used in identifying and describing materials derived from the cocoon of the silk worm, and that the said product and material which is being so manufactured, advertised, sold, and dis-

tributed by respondent is neither composed of genuine silk nor contains any portion of genuine silk.

5. That the said product is sold and distributed by respondent in commerce as aforesaid to many customers in various States in direct competition with the goods of manufacturers and dealers in such commerce of genuine silk.

6. That the aforesaid trade-mark or trade name has been and is being used on and in reference to said cotton product or material with the intent and purpose of confusing, deceiving, and misleading the public into the belief that the said product or material is composed wholly of genuine silk or contains some portion of genuine silk, and the natural result of the use of said trade-mark or trade name is to confuse, mislead, or deceive purchasers thereof and the public into the belief that the said cotton product or material is genuine silk product or material, or contains some portion of genuine silk, or into buying said product or material as genuine silk material, or as containing some portion of silk, and the use of said brand or trade name does deceive purchasers thereof and the public into the belief that the said cotton product or material is genuine silk or contains some portion of silk.

7. That because of the aforesaid method of competition, to wit, the use of the aforesaid trade-mark or trade name and the resulting deception of purchasers and consumers, manufacturers or others engaged in the manufacture and sale or the sale of genuine silk material in interstate commerce have been or are injured in their trade and business.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

At a meeting of the Commission on this date, it appearing that there is on file in the above cause a stipulation duly signed by counsel for the Commission and counsel for respondents, including proposed findings and consent order for the final disposition of this case, the following proceedings were had:

On motion of Commissioner Davies the Commission approved and made the following findings and order, and directed that the same be entered of record in said cause:

FINDINGS AS TO THE FACTS.

Upon the complaint and answer, as amended by stipulation in this case, the Commission finds as follows:

1. That the respondents, A. Theo Abbott & Co., a copartnership composed of A. Theo Abbott, Alvina Abbott, Eugene A. Abbott, and John Laycock, with their principal place of business at Philadelphia, Pa., manufacture under a valued secret process and sell extensively in interstate commerce throughout the United States a textile product, under the registered name "Kapock"; that in connection with the labeling, advertising, and selling said product, respondents have used various descriptive words, among them the following: "Silk" or "Silks," "Kapock Silk" or "Kapock Silks," "Sun-fast Silk," "Tub-fast Silk," usually with the legend "Not a worm silk."

2. That said "Kapock" fabric or product, as now manufactured, contains no portion of silk made from the cocoon of the silk worm.

3. That whenever used without any qualifying word, the word "silk," when applied to textile goods, both in technical and popular usage, has usually been considered to have a precise and exact meaning, and is accurately and properly used only in identifying or describing materials derived or made up entirely from the cocoon of the silkworm. That the terms "worm silk," "cocoon silk," or "genuine silk" have been and are being used as synonymous with "silk."

4. That a result of the use by respondents in connection with their labeling and advertising of their "Kapock" fabrics as now manufactured of the word "silk" or "silks" has been the improper use thereof by some retailers to deceive some purchasers into the belief that they were buying and receiving goods made entirely of silk, when in fact they were not.

5. That such confusion and deception may have resulted in damage to the trade and to manufacturers who deal in silk products—that is, products made entirely of silk derived from the cocoon of the silkworm.

6. The Commission also finds that whatever possible confusion, deception, and injury resulted were without any intent or personal knowledge on the part of the respondents;

and the Commission further finds that respondents have already taken substantial steps to correct every possible confusion and deception; and the Commission finds that by the stipulation herein filed, respondents are ready and willing to remove all causes of possible confusion and deception.

Wherefore,

ORDER TO CEASE AND DESIST.

It is ordered that the respondent, A. Theo. Abbott, Alvina Abbott, Eugene A. Abbott, and John Laycock, being a copartnership trading under the name of A. Theo. Abbott & Co., acting either as a partnership or personally, or through their agents and employees, shall forthwith cease using the word "silk" or "silks" in reference to their "Kapock" fabrics as now manufactured, either in the sale thereof, or on, or in connection with, any of their trade-marks, trade names, labels, or advertising matter referring thereto, except that they may continue to use the legend "Not a worm silk."

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FEDERAL TRADE COMMISSION

v.

A. B. DICK CO. OF NEW JERSEY, A. B. DICK CO.
OF ILLINOIS, AND THE NEOSTYLE CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF
SECTION 3 OF THE ACT OF CONGRESS APPROVED OCTOBER 15,
1914.

Docket No. 4.—May 25, 1917.

SYLLABUS.

Where corporations under common ownership engaged in the manufacture and sale of duplicating machines and supplies, and together controlling approximately 85 per cent of the duplicating machines, 88 per cent of the stencil paper, and 80 per cent of the stencil duplicating ink sold in the United States,

(a) made sales and contracts for sales of their patented stencil duplicating machines and stencil paper to users thereof on the condition, agreement, or understanding, by notice conspicuously displayed on such machines and paper, that the purchasers thereof should not use in connection therewith any stencil duplicating machines or supplies of competitors of such corporations;

- (b) made sales and contracts for sales of their stencil duplicating machines and stencil paper to dealers on the condition that such dealers would not sell any supplies for use on its machines except those made by it; and
 - (c) enforced such conditions, restrictions, or requirements, and insisted upon the observation of the same, with the effect that competition in the sale of duplicating machines and supplies had been and might be substantially lessened:
- Held*, That such sales and contracts of sale, under the circumstances set forth, constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe that the A. B. Dick Co. of New Jersey, the A. B. Dick Co. of Illinois, and the Neostyle Co., hereinafter referred to as respondents, have violated and are violating the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect as follows:

1. The A. B. Dick Co., of New Jersey, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and having an office for the transaction of business at Chicago, Ill.; the A. B. Dick Co., of Illinois, is a corporation organized and existing under and by virtue of the laws of the State of Illinois and having a principal office and place of business in the city of Chicago, Ill.; the Neostyle Co. is a corporation existing under and by virtue of the laws of the State of New Jersey and having a principal office and place of business in New York City, N. Y.

2. The trade in stencil-duplicating machines, stencil paper, ink, and other supplies ordinarily used with such duplicating machines constitutes a substantial and increasing volume of interstate commerce.

3. Such trade for several years last past has been and now is being carried on by a number of concerns, including the respondents, all of which are competitors, either actual or potential—except in so far as they may be either self-restrained or otherwise restrained from competing.

4. For several years next prior to October 15, 1914, the respondents had been continuously engaged in interstate commerce and had been engaged generally in the practice in the course of such commerce of selling by and through the A. B. Dick Co., of Illinois, and the Neostyle Co. for use, consumption, or resale within the United States, their stencil duplicating machines on the condition as set forth in what is designated as a "license restriction" attached to each machine, which provided that such machine should be used only with stencil paper and sheets, ink, and other supplies (ordinarily used with stencil duplicating machines) made and sold by the respondents, the A. B. Dick Co., of Illinois, or the Neostyle Co., and the said A. B. Dick Co., of Illinois, and the Neostyle Co. likewise had been continuously engaged in the practice of selling their stencil paper on the condition that it be used only on the machines and with inks made by the said respective companies, thus providing that any purchaser of each of respondent's machines should not use therewith any supplies of any competitor of these respondents, and that each purchaser of certain of respondents' supplies should neither use them on any machine made by any competitor nor with certain other designated supplies of any competitor of these respondents, and these conditions have been continuously and are now being enforced by these respondents, with the effect of substantially lessening competition and tending to create a monopoly in interstate commerce in such articles.

5. Since October 15, 1914, the said respondents have continued and are now continuing the practice of selling their stencil duplicating machines, ink, paper, and other supplies ordinarily used with such machines in the same manner and under the same conditions and restrictions as are fully set out above in paragraph 4, and the effect of these practices or methods is or may be to substantially lessen competition in interstate commerce in such articles or to tend to create a monopoly in interstate commerce in such articles.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The above-entitled proceeding coming on for hearing before the Commission on the complaint, answer, and proofs taken the 27th day of April, 1917, and the respondents having appeared on said day by their counsel of record herein, S. O. Edmonds, and by A. B. Dick, president of the respondent, A. B. Dick Co., of Illinois, and said counsel for respondents having announced in open session of the Commission that the respondents would not take any further testimony in this proceeding, and said respondents having filed a statement herein to that effect, and the Commission having taking the proceeding under advisement for final determination, now, on this, the 25th day of May, 1917, on the pleadings and testimony, the Commission makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

(1) That at the time of the filing of the complaint and down to December, 1916, the respondent, the A. B. Dick Co., of New Jersey, owned or controlled the stock of the respondents, the A. B. Dick Co., of Illinois, and the Neostyle Co., of New Jersey; that prior to said date the said A. B. Dick Co., of Illinois, and the said Neostyle Co. had been directly engaged, and the said A. B. Dick Co., of New Jersey, had been, through said other respondents, engaged in the manufacture of stencil duplicating machines, stencil paper, stencil ink, and other duplicating-machine supplies in certain States and in the shipment and sale of each of such commodities to persons in other States and Territories of the United States and in the District of Columbia. That since said date the said A. B. Dick Co., of New Jersey, and the said Neostyle Co. have been dissolved and their assets taken over by said A. B. Dick Co., of Illinois, which has alone continued and is now prosecuting the business above described.

(2) That the trade and commerce in stencil duplicating machines, in stencil duplicating paper, and in stencil duplicating ink each constitutes a substantial and increasing volume of trade between persons in different States in interstate

commerce, which has been for several years last past and is now being carried on by these respondents, and also by a number of other concerns, each of which other concerns is a competitor with the others and with these respondents.

(3) That from a time long prior to October 15, 1914, until December, 1916, all of the respondents have, and since said last-mentioned date the respondent A. B. Dick Co., of Illinois, has alone continuously sold their stencil-duplicating machines in interstate commerce for use or resale on conditions and with restrictions as set forth in what is designated by respondents, both in the answer and in the testimony herein, variously as "license agreement," "license restriction," "limited license," "license plan of marketing," "sale upon condition"; that as a part of their system of sale, respondents caused to be inscribed upon each of their stencil-duplicating machines sold by them a legend, notice, warning, or purported agreement in words substantially as follows:

On the rotary mimeograph—

LICENSE RESTRICTION.

This machine is sold by the A. B. Dick Company with the license restriction that it may be used only with the stencil paper, ink and other supplies, made by A. B. Dick Company, Chicago, U. S. A.

On the rotary neostyle—

LICENSE AGREEMENT.

This machine is sold by the Neostyle Company and purchased by the user, with the express understanding that it is licensed to be used only with stencil paper and ink (both of which are patents) made by the Neostyle Company, New York City.

(4) That with each of the various dealers who bought such stencil-duplicating machines from respondents for resale, the respondents have made, and the respondent A. B. Dick Co., of Illinois, is still making, agreements, a part of each of which is as follows as to the respective machines named therein:

As to mimeographs:

2. The right to use mimeographs purchased under the terms of this agreement is dependent upon the full performance of the

conditions of the license restriction attached to each of said mimeographs.

3. The party of the second part covenants and agrees not to sell any of said mimeographs or mimeograph supplies outside of (here is inserted the territory), nor to sell any supplies for use with mimeographs except those made by and procured from the party of the first part; nor to sell or otherwise dispose of any mimeograph supplies to any dealer or agent, but only to users of said mimeographs; nor to sell or otherwise dispose of any mimeograph or mimeograph supplies, either directly or indirectly, to any persons or concerns not entitled to purchase the same.

4. The party of the second part covenants and agrees * * * to pay for such mimeographs and supplies as hereinabove specified, and to report in detail monthly to the party of the first part as to the names and addresses of persons or concerns to whom such mimeographs have been sold, including the consecutive numbers by which the mimeographs are recorded.

As to the neostyle:

1. The right to use neostyles purchased under the terms of this agreement is dependent upon the full performance of the conditions of the license restrictions attached to each of said neostyles.

2. The party of the second part covenants and agrees * * * to report in detail monthly to the party of the first part as to the names and addresses of persons or concerns to whom said rotary neostyles have been sold, including the serial numbers by which said rotary neostyles are recorded.

3. The party of the second part covenants and agrees not to sell any rotary neostyles or rotary neostyle supplies outside of (here is inserted the territory); nor to sell any supplies for use with rotary neostyles except those made by and procured from the party of the first part; nor to sell or otherwise dispose of any of said rotary neostyle supplies to any dealer, but only to users of rotary neostyles; nor to sell or otherwise dispose of any rotary neostyles or rotary neostyle supplies, either directly or indirectly, to any person not entitled to purchase the same.

(5) That from a time prior to October 15, 1914, until December, 1916, all of the respondents have, and since said last-mentioned date the respondent A. B. Dick Co., of Illinois, has alone continuously sold in interstate commerce their stencil duplicating papers with restrictions or conditions inscribed thereon substantially in one of the following forms—either—

This composite stencil sheet is sold by the A. B. Dick Company with the license restriction that it may be used only on Edison's

rotary mimeograph No. 75, and only with ink made by said company. * * * (This stub is licensed for use only once.)

or—

This composite stencil sheet is sold by the Neostyle Company with the license restriction that it may be used only on rotary neostyles and only with ink made by said company. The stub is licensed for use only once.

(6) That the respondents, on each of their cans of stencil ink sold, caused to be inscribed one of the following notices:

Notice to mimeograph users: Every mimeograph is sold with a proper license restriction covering the use of stencil paper, ink, and other supplies, and is so marked.

Notice to rotary neostyle users: The rotary neostyle is sold with a proper license restriction covering the use of stencil paper, ink, and other supplies, and is so marked.

(7) That certain parts of certain of respondents' stencil duplicating machines and certain parts of their stencil papers were and are covered by letters patent.

(8) That the respondents' stencil duplicating machine supplies have been and are now being sold at a large profit and at prices substantially higher than the prices at which supplies of their competitors, of a character and quality satisfactory to users of mimeographs and neostyles, could have been and can at this time be purchased.

(9) That the conditions or restrictions imposed by the respondents in the sale of their stencil duplicating machines, or their plan of marketing such machines, herein found to be generally used by the respondents, (a) have compelled, and do compel, purchasers and users of such machines to purchase stencil duplicating paper, stencil duplicating ink, and other stencil duplicating supplies exclusively from the respondents, and at prices substantially higher than prices at which supplies of competitors of these respondents, satisfactory to many of such purchasers and users, could have been and can now be purchased; (b) have prevented, and do prevent, competing manufacturers from selling their stencil duplicating paper, stencil duplicating ink, and other stencil duplicating supplies for use with stencil duplicating machines sold by respondents; and (c) have prevented, and do prevent, dealers from selling stencil duplicating paper,

stencil duplicating ink, and other stencil duplicating supplies of competitors of these respondents, and in particular have prevented, and do prevent, dealers from selling such supplies of competitors of respondents for use with respondents' stencil duplicating machines.

(10) That the conditions or restrictions imposed by the respondents in the sale of their stencil paper and the plan of marketing such paper (a) have compelled, and may compel, purchasers or users of such paper to purchase their stencil duplicating machines, stencil ink, and other stencil duplicating machine supplies from the respondents exclusively, and at prices substantially higher than prices at which stencil duplicating ink and other stencil duplicating machine supplies of competitors of these respondents may be purchased; and (b) do and may prevent competing manufacturers from selling their machines, ink, and supplies for use with respondents' stencil paper.

(11) That for the year 1915 the respondents controlled in money value of sales approximately 85.1 per cent of the commerce in the United States in stencil duplicating machines, approximately 88.2 per cent of such commerce in stencil duplicating paper, and approximately 79.9 per cent of such commerce in stencil duplicating ink, and that such percentages represent substantially the present ratio of respondents' business to the total business and commerce done in the United States in these articles.

(12) That the respondent, A. B. Dick Co., of Illinois, is and has been aggressively seeking further to increase its interstate trade and commerce in stencil duplicating machines, stencil paper, ink, and other supplies for such machines.

CONCLUSIONS.

(1) That (a) the sale by the respondents of stencil duplicating machines, stencil paper, or other stencil duplicating machine supplies upon conditions as set forth in the so-called license restriction and in the contracts herein found to be used by respondents, or under the "plan of marketing" herein described and found to be used by them, constitutes a sale upon condition, agreement, and understanding that the

purchaser if a user shall not use the machines or supplies of a competitor or competitors of these respondents, and, if the purchaser be a dealer, that he shall not use nor sell for use with the respondents' machines or supplies the machines or supplies of a competitor or competitors of these respondents; and (b) that the effect of the condition, agreement, and understanding is such that it has substantially lessened, and does and may substantially lessen, competition in interstate commerce in such stencil duplicating machines and supplies therefor.

(2) That the sale by the respondents of their stencil duplicating machines and stencil paper upon the condition, agreement, or understanding herein described and found to be used by the respondents, and the plan of marketing such machines, paper, and other supplies, is in violation of section 3 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, in that the effect thereof has been, is, and may be to substantially lessen competition and tend to create a monopoly in interstate commerce in the manufacture and sale of such stencil duplicating machines, stencil paper, stencil ink, and other supplies.

ORDER TO CEASE AND DESIST.

The above entitled proceeding being at issue upon the complaint of the Commission and the answer of the respondents, and the testimony having been reduced to writing and filed, and the Commission on the date hereof having made and filed a report containing its findings as to the facts and its conclusions that the respondents have violated, and are now violating, section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof: Therefore

It is ordered, That the respondent, the A. B. Dick Co., of Illinois, its officers and agents, cease and desist from directly or indirectly making any sale or contract for sale in interstate commerce of its stencil duplicating machines or stencil

paper on the condition, agreement, or understanding, whether embodied in contract, license restriction, notice, or in whatever manner imposed, that the purchaser or purchasers thereof shall not use therewith, or when the purchaser be a dealer, shall not use or sell for use in connection therewith, the stencil duplicating machines, stencil paper, stencil ink, or other stencil duplicating machine supplies of competitors of the respondent.

It is further ordered, That the respondent, the A. B. Dick Co., of Illinois, its officers and agents, cease and desist from enforcing any condition, restriction, or requirement heretofore imposed in connection with the sale, or embodied in a contract for sale, of its stencil duplicating machines or stencil duplicating paper, that the purchaser shall not use or sell for use, with such stencil duplicating machines or stencil paper, the stencil duplicating machines, stencil duplicating ink, stencil paper, or other stencil duplicating supplies of competitors of these respondents:

Provided, That respondent, A. B. Dick Co., of Illinois, is hereby granted not to exceed 90 days from the date hereof within which to make such changes in its business methods as will enable it to fully comply with this order.

RESOLUTION.

Whereas on the 25th day of May, 1917, the Commission issued an order directing the A. B. Dick Co., of Illinois, to cease and desist from selling its stencil duplicating machines and stencil paper upon the condition, agreement, or understanding that the purchaser or user should not use therewith machines or supplies of competitors of the said A. B. Dick Co.; and

Whereas a period of 90 days was given the A. B. Dick Co. in which to make such changes in its method of doing business as to conform to the order; and

Whereas it is desirable that the Commission know what changes the said company makes in its plan of marketing its machines and supplies as a result of this order: Now, therefore, be it

Resolved, That under the authority conferred on the commission by paragraph (b) of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, the said A. B. Dick Co., of Illinois, be, and the same is hereby, required within 30 days after such changes in the conduct of its business have been made to make a special report to the Federal Trade Commission fully setting forth the nature

of such changes and setting forth in complete detail the plan or plans adopted for the future sale of such machines and supplies, together with any contracts, agreements, or understandings, by warranty or otherwise, proposed to be attached to the future sale or contract for sale by respondent of its machines and supplies, either for resale or use of such machines or supplies.

FEDERAL TRADE COMMISSION *v.* MUENZEN
SPECIALTY COMPANY.