

IN THE MATTER OF

W. HARRIS THURSTON & COMPANY, INCORPORATED

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

Docket 1313. Complaint, May 20, 1925—Decision, Jan. 15, 1927

Where a "fine cotton goods converter", engaged in the sale to shirt and garment manufacturers, of an all cotton fabric resembling silk in appearance,

- (a) Offered and sold said fabric through advertisements in trade journals and other publications, circulars, cards and other advertising literature, and through traveling salesmen under its trade-mark "Nusylk"; and
- (b) Supplied its traveling salesmen and customers with cards and display cards, respectively, and with labels in the case and at the request of the latter, and employed labels, tags and bands for its said fabric, upon which various cards, labels, tags, and bands the words "Nusylk" and "Imported" (and "English" in the case of said customer labels) were conspicuously printed and the words "Superfine" and "Cotton" were printed in relatively small and inconspicuous letters;

With the result that its customers' retail dealer vendees were enabled to offer and sell products made from the aforesaid fabric under the name "Nusylk", without sufficient notice as to the nonsilk content thereof, and with the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into believing said fabric and shirts or other articles made therefrom to consist in whole or in part of silk and thereby divert trade from competitors dealing in silk, cotton, and mixed silk and cotton, shirts, truthfully advertised and described:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Cullen & Dykman, of Brooklyn, N. Y., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation engaged in the importation of cotton shirt fabrics, and in the sale thereof to purchasers in the various States, and with principal office and place of business in New York City, with naming product misleadingly, misrepresenting product, advertising falsely or misleadingly and misbranding or mislabeling, in violation of the provisions of section 5 of such act prohibiting the use of unfair methods of competition in interstate commerce, in that it offered and sold to shirt manufacturers an imported fabric dealt in by it made entirely of cotton and with the appearance of silk, under the trade name "Nusylk," through

advertisements and trade journals and other publications, advertising circulars, cards and other literature, and solicitation of traveling salesmen, and supplied said vendees labels to be attached by them to the shirts manufactured from said fabric, containing the afore-said name in large and conspicuous letters, and the words "All cotton" or "Superfine cotton" in small and inconspicuous letters; with the capacity and tendency and with the effect of misleading and deceiving the purchasing public into believing such fabric and the shirts made therefrom and labeled as above set forth to be composed in whole or in part of silk from the cocoon of the silkworm, and with the capacity, tendency and effect of diverting business from and otherwise injuring competitors dealing in shirting fabrics composed in whole or in part of silk and properly so represented and labeled and competitors dealing in such fabrics composed of cotton or other material containing no silk and neither in trade name, label nor otherwise represented as containing silk in whole or in part; all to the prejudice of the public and respondent's competitors.

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondent, W. Harris Thurston & Co., Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of section 5 of said act. Respondent filed its answer and appeared by attorney. Hearing was had in the course of which testimony and evidence were received, briefs filed by attorneys for the Commission and the respondent, and thereupon this proceeding came on for decision, and the Commission having considered the record and being now advised in the premises makes this, its report, stating its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. Harris Thurston & Co., Inc., is and since 1921 has been a corporation organized and existing under and by virtue of the laws of New York with its principal office and place of business in New York, State aforesaid, and branch office in the city of Chicago, State of Illinois. It is, and during said period has been, engaged in a business usually known in the trade as a fine cotton goods converter. Some of the cotton cloth for conversion is pur-

chased in the United States but it is the practice of respondent to import the greater part of its cloth for such purposes from England where it is constructed according to the specification of respondent. It is so imported in the gray state as it comes off the looms, and in the United States is placed in bleacheries by respondent, where it is converted by finishing, printing and dyeing. The kind of finish and form of pattern are selected or determined by respondent, and by means of a special process the cotton cloth acquires in the course of its conversion a luster and finish which causes it to have the appearance of silk. The word "silk" signifies and means and is generally understood by the public to signify and mean a fabric or material derived from the product of the cocoon of the silkworm. On account of its said resemblance to "silk", respondent caused the coined word "Nusylk" to be registered as a trade-mark for its converted product.

PAR. 2. In the course and conduct of said business, respondent for several years last past, by means of advertisements in trade journals and other publications, circular, cards and other advertising literature, and also through traveling salesmen, has offered for sale and sold, and now offers for sale and sells the said all-cotton fabric to manufacturers of shirts and other garments under the said trade-mark "Nusylk", and has caused and causes such fabric when sold to be transported to purchasers thereof in the various States of the United States in competition with persons, partnerships and other corporations engaged in the sale to such customers of silk, cotton and other fabrics containing no silk.

PAR. 3. It has been and is the practice of respondent to furnish its customers with a display card for use in advertising "Nusylk", on which said name is shown in much larger letters than elsewhere appear thereon, and in a combination of colors which renders "Nusylk" the most conspicuous and legible word on the card. Just above the center of the lower half of the card is the word "Imported" in large letters of orange color; on its left is the word "Superfine" and on its right the word "cotton" and each of them appears in smaller letters than the word "Imported". The traveling salesmen of respondent use in the solicitation of purchasers for Nusylk a card bearing the same inscription in smaller letters but with the same relative sizes. Tags affixed to the Nusylk when shipped to customers, and bands used in wrapping for shipment contain the same words, although on these the word "Imported" appears below the word Nusylk, and above the words "Superfine cotton", instead of intervening between them. It has been and still is the practice of respondent, when so requested by the manufacturer or jobber to whom it sells its Nusylk, to furnish labels to be attached to shirts or other garments manufactured therefrom. There is no obligation

on the part of the manufacturer to attach such label to the finished product, their use by the customer when so furnished being entirely discretionary. The label is the usual size for shirts or other garments and bears the following legend:

ENGLISH
NUSYLK
Reg. U. S. Pat. Off.
IMPORTED
Superfine Cotton

The trade-mark "Nusylk" appears in letters of such size that it is the most conspicuous feature of the label and attracts notice before any other inscription thereon. Appearing inconspicuously in small letters at the lower edge of the label are the words "superfine cotton".

PAR. 4. Retailers engaged in the sale of men's shirts made from the product of respondent called "Nusylk" have utilized its resemblance to silk and the trade name "Nusylk" by which respondent describes and sells it, to advertise, offer for sale and sell such shirts under and by name "Nusylk" without any reference whatever to its production from cotton or any other qualification. Instances or illustrations of the methods employed by retailers in advertising and offering for sale men's shirts made from the product of respondent are furnished by the following:

A place of business, known as Ritteff's, located at Fort Wayne, Ind., engaged in the sale of men's wear, on the 6th day of August, 1924, in an advertisement in the News Sentinel of said city, offered for sale, men's shirts made from the product of respondent, the pertinent part of which was as follows:

SALE OF \$3.00, \$4.00 and \$5.00
NUSYLK AND GENUINE IMPORTED
ENGLISH BROADCLOTH SHIRTS

At Scranton, Pa., October 23, 1924, the Hagen & Wagener Co.'s store, in an advertisement in the Scranton Times, offered for sale men's shirts made from the product of respondent under the name of "Nusylk" and at Providence, R. I., during said year, there was taken from the window of the Matheson Toggery Shop, where shirts made from the product of respondent were being offered for sale, a display card which read as follows:

IMPORTED
NUSYLK
SHIRTS
SEPARATE COLLAR
TO MATCH
\$3.45

In none of these advertisements of said retailers, or on the display card was there any warning or notice that the material "Nusylk" contained or contains no silk and consists entirely of cotton.

PAR. 5. The use of the word "Nusylk" by respondent on its label, display cards and in other descriptive and advertising matter, as hereinbefore described, puts an instrument in the hands of its customers and furnishes means to the retailers, to whom said customers in turn sell the shirts or other finished articles made from the product of respondent, by which they are enabled to offer for sale and sell them, in commerce among the various States of the United States, under the name of "Nusylk" without sufficient notice that the cloth or fabric so called, or the shirts or other articles manufactured therefrom, contain no silk, and the said use of the word "Nusylk" by respondent has had and has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the belief that the material to which it is applied and the shirts or other articles made therefrom consist in whole or in part of silk, thereby diverting trade from competitors of respondent, engaged in the sale. in commerce, among the several States, of silk shirts, cotton shirts, and mixed silk and cotton shirts, who truthfully advertise and describe their respective products when offering them for sale to the public.

CONCLUSION

The above and foregoing acts and practices of respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in interstate commerce in violation 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".

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, the testimony and evidence and briefs of counsel for the Commission and for the respondent, and the Commission having made its report stating its findings as to the facts with its conclusion that the respondent, W. Harris Thurston & Co., Inc., has violated the provisions of an 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",

It is now ordered, That the respondent, W. Harris Thurston & Co., Inc., its officers, agents, and employees, cease and desist from

using directly or indirectly, in connection with the sale or offering for sale of a cotton fabric, in interstate commerce, the word "Nusylk," alone or in combination with other word or words, as a trade name, trade-mark, label or brand, or on invoices, or in advertising, or using any other word or trade name, trade-mark, brand or label containing the word silk or any phonetic equivalent thereof which implies that respondent's cotton fabric contains silk in whole or in part.

It is further ordered, That respondent, its officers, agents and employees, cease and desist, directly or indirectly, from furnishing to their customers to use, or authorizing their use, in connection with a cotton fabric, at their discretion, or at all, a label containing or bearing the word "Nusylk" alone or in combination with other word or words, or the word "Silk" or the words "New Silk," or any phonetic equivalent of the word "Silk" or the words "New Silk" which implies that the cotton fabric or garment made therefrom consists of or contains silk.

It is further ordered, That respondent shall file with the Federal Trade Commission a report within 60 days from and after service of this order, setting forth in detail the manner and form of compliance therewith.

Commissioner Humphrey dissents.

IN THE MATTER OF

REUBEN BERMAN, DOING BUSINESS UNDER THE
TRADE NAME AND STYLE OF SILKTEX HOSIERY
MILLS

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

Docket 1317. Complaint, May 22, 1925—Decision, Jan. 15, 1927

Where an individual engaged in the purchase of hosiery containing about 14 per cent of genuine silk and 86 per cent of "artificial silk" or fibre, from the manufacturers, and in the sale thereof directly to the consuming public through house-to-house canvassers, and neither owning nor operating any mill or factory manufacturing hosiery,

- (a) Employed the words "Silktex Hosiery Mills" as a part of his trade name, and featured said words in his trade literature describing said hosiery, with the capacity and tendency to mislead and deceive the purchasing public into believing him to be a manufacturer selling his said product at prices substantially below prevailing prices for similar hosiery sold in the usual course of trade from manufacturer to jobber to retailer to public, and thereby divert trade from manufacturers who sold their product directly to the public in competition with him, and from dealers who purchased their hosiery from the manufacturers and resold the same to the public under truthful descriptions of the source thereof;
- (b) Used and featured the words "Ladies Silk Hosiery" or "Ladies Silktex Fashioned Silk Hosiery" in connection with the sale and offer of his said hosiery and in the designations applied thereto in his trade literature, and upon the containers thereof, with the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into believing such hosiery to be composed wholly of the silk of the cocoon of the silk worm, and to divert business from and otherwise injure competitors engaged in the sale of hosiery composed entirely of silk, and hosiery composed partly of silk and partly of artificial silk and other materials:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Berman & Berman, of Hartford, Conn., for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an individual engaged in the sale of hosiery direct to the consuming public through house to house canvass by canvassers soliciting business from consumers in various States, and with place of business in New York City, with assuming or using misleading trade name, advertising falsely or misleadingly and misbranding or