

IN THE MATTER OF
CHARLES KURLAN

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

Docket 1362.—Complaint, Jan. 15, 1926—Decision, Feb. 6, 1928

Where an individual engaged in the sale of cloth or fabrics to manufacturers of and dealers in, men's shirts, named, designated and branded a cloth or fabric so dealt in by him and composed wholly of cotton, though resembling and simulating silk in texture and general appearance, "Tabsylk", and supplied his customers with labels featuring such name and designation, for their use upon the shirts manufactured by them from the aforesaid cloth; with the capacity and tendency to mislead and deceive many of the consuming public into purchasing said shirts so labeled and described as "Tabsylk", and so displayed, represented, advertised and sold by said customer's retail dealer vendees, as and for garments composed in whole or in part of silk, and with the effect of placing in the hands of manufacturers and dealers the instrument and means, in the supplying of the aforesaid labels, of misleading and defrauding the consuming public by enabling them thereby, with or without further representations, to offer and sell the same to said public as and for such garments and of diverting business from and otherwise injuring and prejudicing competitors dealing in cloth composed in whole or in part of silk and rightfully and lawfully so represented, and competitors dealing in cloth composed wholly of cotton without misrepresentation and without furnishing deceptive or misleading labels to their vendees, as above set forth, or in anywise placing in the hands of others the instrument or means of misleading or committing a fraud upon the public with respect to their fabric; all to the prejudice of such competitors, and to the injury of the public:

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

Mr. Henry Miller for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent individual, engaged in the sale of cloth and fabrics to shirt manufacturers in the various States, and with place of business in New York City, with naming fabric 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.

Respondent, as charged, for more than two years last past named and designated as "Tabsylk" a fabric dealt in by him, as above

set forth, and composed wholly of cotton, though resembling silk in texture and in general appearance, and supplied and delivered to his manufacturer vendees labels containing the aforesaid word in large and conspicuous letters, to be by them attached to the shirts which they manufactured and sold to the retailers in the various States, for display and sale, thus labeled, as known to respondent, to the consuming public.

The use of such labels, as alleged, "has the capacity and tendency to mislead and deceive many of the consuming public to purchase said shirts bearing aforesaid labels in the belief that said shirts are made of a fabric composed in whole or in part of silk, and respondent by supplying and delivering said labels to his aforesaid vendees places in the hands of others the instrument and means of committing a fraud upon the consuming public by enabling dealers to offer for sale and sell said shirts to the consuming public as and for shirts made in whole or in part of silk," and the aforesaid acts and practices tend to divert business from and otherwise injure and prejudice competitors of respondent, many of whom deal in and sell fabrics composed wholly or partly of silk and rightfully and lawfully so represented by them, and others of whom deal in fabrics composed wholly of cotton, without in any manner representing the same as composed in whole or in part of silk and without furnishing their vendees deceptive labels, as above set forth, or placing in the hands of others the instrument or means of committing a fraud upon the public; all to the prejudice of the public and of 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 a complaint upon the respondent, Charles Kurlan, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered his appearance herein, a stipulation as to the facts (filed of record) was agreed upon by and between respondent and counsel for the Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts of the proceeding before the Federal Trade Commission and in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and that the Commission may proceed further upon said statement to make its report

Findings

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in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

Thereupon this proceeding came on for decision; and the Commission, having received said stipulation and duly considered the record, and now being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusions drawn therefrom:

FINDINGS OF FACTS

PARAGRAPH 1. Respondent is an individual with his place of business in the City and State of New York. He is and has been for more than three years last past engaged in the business of selling and distributing cloth or fabrics to manufacturers and dealers of men's shirts located at various points throughout the several States of the United States. In and throughout the course and conduct of said business respondent caused said cloth or fabrics when so sold to be transported from his place of business in the City and State of New York through and into other States of the United States to respective purchasers thereof in such other States; and in so carrying on his business respondent is and at all times throughout the conduct thereof has been in direct active competition with many other individuals, partnerships and corporations similarly engaged in selling and distributing cloth or fabrics to manufacturers and dealers of men's shirts in commerce between and among the various States of the United States.

PAR. 2. Among the cloth or fabrics dealt in by respondent, as set out in paragraph 1 hereof, is a cloth or fabric composed wholly of cotton but resembling and simulating silk in texture and general appearance which respondent markets, and has marketed for more than three years last past, as and under the conditions and circumstances hereinbelow described. Said cloth or fabric has been and is branded, named, and designated by respondent "Tabsylk", under which name, designation, and brand he advertises, offers for sale, sells, and distributes the same to his aforesaid customers or vendees. His annual sales of such so-called "Tabsylk" amount to approximately \$300,000. Also in connection with his sale and distribution of said cloth respondent supplies and delivers to his aforesaid customers and vendees certain labels upon which he caused to be set forth in large and conspicuous letters said name and designation "Tabsylk", which labels, in accordance with respondent's purpose and intention, are sewed or otherwise attached by his vendees or customers to the shirts manufactured from said so-called "Tabsylk" cloth sold by respondent. Said shirts with said labels attached thereto are sold and delivered

by respondent's customers and vendees to retail dealers and the consuming public throughout various States of the United States; and also said retail dealers thereafter offer for sale, display, sell and deliver such shirts with said so-called "Tabsylk" labels attached thereto to the consuming public throughout the United States, all of which is well-known to and in accordance with respondent's purpose and plan of distribution. Further, respondent's aforesaid customers and the trade generally, advertise, represent and describe as "Tabsylk" the shirts manufactured from respondent's so-called "Tabsylk" cloth, all in accordance with respondent's purpose and as the direct result of his use of the word "Tabsylk" in naming, describing and representing his cloth as aforesaid.

PAR. 3. The use by respondent of the word "Tabsylk" in naming, designating, describing and representing said cloth composed of cotton, as hereinabove set forth in paragraph 2 hereof, is false and misleading, and has and had the capacity and tendency to mislead and deceive many of the consuming public into purchasing said shirts, bearing aforesaid labels containing the word "Tabsylk", and said shirts advertised and described as "Tabsylk" shirts, as aforesaid, in the erroneous belief that the fabric or cloth of which said shirts are made is composed in whole or in part of silk. And further, respondent by supplying and delivering said labels to his aforesaid customers and vendees thereby placed in the hands of manufacturers and dealers the instrument and means of misleading and committing a fraud upon the consuming public by enabling said manufacturers and dealers by the use of said labels and the term "Tabsylk", with or without further representations, to offer for sale and sell said shirts made from respondent's so-called "Tabsylk" cloth to the consuming public as and for shirts made in whole or in part of silk.

PAR. 4. There are among the competitors of respondent referred to in paragraph 1 hereof many who deal in and sell cloth composed in whole or in part of silk and who rightfully and lawfully represent said fabrics to be so composed. There are also many of said competitors who deal in and sell cloth composed wholly of cotton and who in no wise represent said fabrics to be composed in whole or in part of silk. Further, said last-named competitors do not by furnishing to their said vendees deceptive or misleading labels in like manner as respondent, or in any other manner whatsoever, place in the hands of others the instrument or means of misleading or committing a fraud upon the public with respect to their fabrics. Respondent's acts and practices hereinbefore set out tend to divert business from and otherwise injure and prejudice aforesaid competitors, and are to the injury of the public.

CONCLUSION

The acts and things done by the respondent in the use of the word "Tabsylk" as and under the conditions and circumstances set forth in the foregoing findings as to the facts are to the injury and prejudice of the public and respondent's competitors, are unfair methods of competition in interstate commerce, and constitute a 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 stipulation as to the facts in lieu of testimony executed and filed by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions 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",

It is now ordered, That respondent, Charles Kurlan, his agents, representatives, servants, and employees, cease and desist, in connection with the sale and distribution of cloth or fabric in interstate commerce, from directly or indirectly representing, describing, advertising, branding, or labeling with the word "Tabsylk" or word or words of similar import any such cloth or fabric which is not composed wholly of silk, a product of the cocoon of the silk worm.

It is further ordered, That respondent, Charles Kurlan, shall, within sixty days after the service upon him of a copy of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

NATHANIEL L. BLAUSTON

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