

IN THE MATTER OF
MORRIS STEINBERG, AN INDIVIDUAL DOING BUSINESS
UNDER THE NAME AND STYLE OF MARVEL DRESS
COMPANY

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

Docket 1466. Complaint, June 13, 1927—Decision, Mar. 17, 1928

Where an individual engaged in the sale of women's dresses direct to the consumer; in advertising the same in newspapers and periodicals of national circulation, applied the words "wool embroidered serge dress rayon silk trimmed" to a dress composed entirely of cotton, with cotton and rayon trimming, and the words "wool embroidered serge dress", "silk hand-embroidered wool finish serge dress", "silk embroidered pongee", "pongee dress, silk hemstitched" and "silk lustre pongee dress", to all-cotton garments containing neither wool nor silk; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into believing said dresses to be composed of wool or of silk and to induce the purchase thereof in such belief, and with the effect of diverting business from and otherwise injuring and prejudicing competitors dealing in dresses of pongee fabric embroidered with silk material, and in those composed of wool fabric, and truthfully describing and representing the same:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

Mr. William A. Sweet 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 at Philadelphia in the sale direct to consumer purchasers in States other than Pennsylvania, of women's dresses upon orders solicited through advertisements and received through the mails, with advertising falsely or misleadingly, 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, in his aforesaid advertisements in newspapers and periodicals of general circulation throughout the United States or in certain sections thereof, described and represented dresses composed of cotton cloth and containing no silk whatsoever as "Genuine silk lustre pongee dress trimmed with silk embroidery" and "Silk embroidered pongee"; dresses composed almost entirely

of cotton fabric and containing no wool whatsoever as "Beautiful new wool finish checked serge dress, \$1.98, latest smartest, fall style—a splendid wool finish fabric"; and dresses composed of an inferior grade of cotton cloth, and with no silk material whatsoever, as "Amazing offer—beautiful heavy cloth dress suitable for winter wear, trimmed with silk embroidery, \$1.49; value, \$3.50".

The aforesaid descriptions and representations, as alleged, "are false and misleading and are calculated to and do deceive the purchasing public into the belief that such dresses are composed either wholly or in part of silk, or of wool, in the case of the first two, and, in the case of the last, are composed "of a heavy fabric suitable for winter wear and trimmed with embroidery composed of silk", and said acts and practices tend to and do divert business from and otherwise injure and prejudice respondent's competitors among whom there are those who sell and transport in commerce women's dresses composed of pongee fabric embroidered with silk material, or of wool fabric, or of heavy cloth suitable for winter wear, who truthfully describe and represent the same; all to the prejudice of the public and such 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 (38 Stat. 717), the Federal Trade Commission issued and served its complaint upon the respondent, Morris Steinberg, charging him with the use of unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of said act.

Hearings were had in the course of which testimony and evidence were received in support of the charges in the complaint and in opposition thereto. The trial examiner filed his report upon the facts to which respondent filed exceptions. Counsel for the Commission filed his brief. No brief was filed by the respondent and the time for filing respondent's brief expired November 26, 1927.

Thereupon this proceeding came on for decision and the Commission having duly considered the record, and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

¹ As regards the use of the word "pongee", the complaint alleges that said word "used in said advertisements signifies to and is understood by a substantial part of the purchasing public as a fabric composed entirely of silk, and the use by respondent of such word as aforesaid has the capacity and tendency to and does mislead and deceive the purchasing public into the belief that the said cotton dresses are composed of a silk fabric and to induce them to purchase the same in that belief".

Findings

12 F. T. C.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual doing business under the name and style of Marvel Dress Co., with his principal office and place of business in the city of Philadelphia in the State of Pennsylvania. For a period of two years, prior to June 13, 1927, he was engaged in the business of selling direct to the consumer, women's dresses upon orders solicited through advertisements inserted by him in newspapers and periodicals of national circulation, and received from such consumers through the United States mails in response to such advertisements. The dresses thus sold by respondent were shipped by him from his place of business in the city of Philadelphia in the State of Pennsylvania into and through other States of the United States to the purchasers thereof located in States other than the State of Pennsylvania. In the course and conduct of this business respondent was in competition with other individuals, partnerships, and corporations also engaged in the sale and transportation, in interstate commerce, of women's dresses.

PAR. 2. In the advertising matter used by respondent in connection with the sale of certain of his said women's dresses, respondent represented and described said dresses, respectively, in the following language:

Extraordinary sale wool embroidered serge dress with Charleston flare skirt, rayon silk trimmed. Only \$1.49

Wool embroidered serge dress.....	\$1.49
Wool embroidered serge dress.....	.98
Silk embroidered pongee dress.....	1.39
Silk hand embroidered wool finish serge dress.....	1.49
Silk embroidered pongee dress.....	.88
Pongee dress, silk hemstitched.....	1.19
Silk lustre pongee dress.....	.99

The dress described above as "wool embroidered serge dress rayon silk trimmed," contained no wool, either in the embroidery or in the dress, and contained no silk in the trimming, the dress itself being all cotton, the embroidery being all cotton, the trimming being cotton and rayon.

The dress described as "wool embroidered serge dress" contained no wool whatever, either in the embroidery or in the dress, but was composed entirely of cotton.

The dress described as "silk hand-embroidered wool finish serge dress" contained no silk and no wool, but was composed entirely of cotton.

100

Order

The dresses described as "silk embroidered pongee," "pongee dress, silk hemstitched," "silk lustre pongee dress" contained no silk, but were composed entirely of cotton.

The word "serge" signifies and means and is generally understood by the public to signify and mean a fabric or material composed of wool unless it is essentially and clearly modified, as by the use of the term "cotton serge." The word "pongee" signifies and means and is generally understood by the public to signify and mean a fabric derived from the product of the cocoon of the silkworm.

PAR. 3. There are among the competitors of respondent referred to in paragraph 1 hereof those who sell and transport in commerce women's dresses composed of pongee fabric embroidered with silk material, and also of wool fabric, who truthfully describe and represent the same. The above acts and practices of respondent tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 4. The use of the words "serge" and "pongee," respectively, in the advertising matter used by respondent to represent and describe the dresses referred to in paragraph 2 hereof is false and misleading and has the capacity and tendency to mislead and deceive a substantial part of the purchasing public into the belief that said dresses are composed of wool or of silk, respectively, and to induce purchasers to purchase the same in that belief.

CONCLUSION

Practices of the respondent under the conditions and circumstances described in the foregoing findings are to the injury and prejudice of the public and respondent's competitors, and are unfair methods of competition in 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 answer of the respondent, the testimony and evidence, and the brief of counsel for the Commission, the respondent having filed no brief, and the Commission having made its report stating its findings as to the facts and its conclusion based thereon that the respondent, Morris Steinberg, 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",

Order

12 F. T. C.

It is now ordered, That the respondent, Morris Steinberg, his agents, employees, and successors, cease and desist, in connection with the sale or offering for sale of women's dresses, in interstate commerce, from—

(a) Using the word "serge" to represent and describe dresses which are composed of a material or materials other than wool.

(b) Using the word "wool", alone or in combination with any other word or words, to represent and describe dresses which are composed of a material or materials other than wool, unless, when such dresses are composed in part of a wool material, the word "wool" is accompanied by a word or words, equally conspicuous with it in characters or type, clearly indicating that said dresses are composed in part of a material or materials other than wool.

(c) Using the word "pongee" to represent and describe dresses which are composed of a material or materials other than silk, the product of the cocoon of the silkworm.

(d) Using the word "silk", alone or in combination with any other word or words, to represent and describe dresses which are composed of a material or materials other than silk, the product of the cocoon of the silkworm, unless, when said dresses are composed in part of silk the word "silk" is accompanied by a word or words, equally conspicuous with it in characters or type, clearly indicating that said dresses are composed in part of a material or materials other than silk.

It is further ordered, That respondent shall file with the Federal Trade Commission, within 60 days after the service of this order upon him, a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist herein set forth.

Syllabus

IN THE MATTER OF
N. SHURE COMPANY

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

Docket 1431. Complaint, Nov. 22, 1926—Decision, Mar. 27, 1928

Where a corporation engaged in the purchase of various merchandise from the manufacturers, and in the sale thereof through catalogues to retail dealers; in said catalogues, and in many instances, through designations and descriptions stamped upon the articles, or labels, containers or wrappers thereof,

- (a) Represented certain watches as containing a "21 jewel Swiss movement" or as being 21 jewel watches, which did not contain such a number serving as frictional bearings, with the effect of misleading the trade and consuming public and of inducing them to purchase said watches as and for those containing 21 jewels performing a mechanical function;
- (b) Represented knife and fork sets, toilet sets and photograph frames as composed in whole or in part of "Black ivory", "White ivory", "French ivory" and "Ivory-grained", and manicure sets as composed in whole or in part of "Amber", "Pearl", and "Shell", the fact being that said articles were not composed in whole or in part of the aforesaid substances, but of pyroxylin or celluloid in such a way as to simulate the appearance thereof;
- (c) Falsely represented certain boxes and containers and the coverings of certain field glasses, made of a material resembling leather in color and finish, as respectively composed in whole or in part of "Leather" or of "Morocco", and neckties, handkerchiefs, scarfs, hosiery and bedspreads not composed entirely of silk, as "Silk", "Fibre silk", "Art silk" and "Rayon silk";
- (d) Represented scarf pins and rings as ornamented and set with opals, rubies, sapphires, and diamonds, and necklaces as "Genuine pearls", "LaVega pearls", "Deltah pearls" and "Richelleu pearls", the fact being that such articles were neither ornamented, nor set with, nor composed of the genuine stones, but only of an imitation thereof; and
- (e) Represented watches as "Gold-plated" and "Gold-filled", which were not so manufactured as to contain three one thousandths of an inch in thickness of gold on the outside and one one thousandth of an inch on the inside, the specified standards recognized by the trade;

With the capacity and tendency to mislead and deceive the consuming public in respect of the composition of the aforesaid articles, and to cause them to purchase the same in the erroneous beliefs thereby induced;

- (f) Represented field and marine glasses not manufactured for the United States Government in accordance with Government specifications or requirements, and not a part of surplus stock disposed of by the Government, as "U. S. Signal Service" glasses;
- (g) Represented as "Sheffield silver plate" and "Sheffield plate on copper base", castor sets, sugar and cream sets, and bowls neither made by the silversmiths of Sheffield, England nor by their process, nor products known to the trade and purchasing public as "Sheffield silverware" or "Sheffield plate", and in many instances stamped such designations and descriptions