

Syllabus

IN THE MATTER OF
BERNARD-HEWITT & 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 1543. Complaint, Oct. 30, 1928—Decision, Dec. 17, 1928

Where a corporation engaged in the sale by mail of sundry articles of merchandise direct to the consumer; in its catalogues describing such articles, and the prices thereof,

- (a) Represented as silk articles and materials containing no silk (material derived from the cocoon of the silkworm), but of less value than silk, though resembling the same in general appearance, applying such designations as "Silk", "Art Silk", "New Silk", "Silkoline", "Tussah Silk", "Silk Faille Poplin", "Pongee", "Cotton Pongee", "French Rayon Art. Silk Lace Net Dress with Mercerized Pongee Slip", etc., to such articles as rayon hosiery, cotton coverings of comforters, suits and dress materials composed only partly of silk, and cotton fabrics and cotton and rayon dresses, and designating or describing rayon and cotton hats as of "Genuine Silk Bengaline", and "Silk Sport", and dresses made of rayon and cotton, and of material other than silk as "Beautiful satin party dress", "Misses sparkling party dresses", and "Rayon Art. Silk Dress", and Neutrisilk, "Fashioned from figured Neutrisilk, a beautiful new material which has the lustre and wearing qualities of genuine silk", respectively;
- (b) Represented garments composed of wool, cotton, and silk as "All Wool", "Wool" and "Wool Tweed" and sweaters composed entirely of cotton as "Wool Mixed Silpon Sweaters", "Part Wool";
- (c) Represented shoes composed of materials other than alligator leather as "Alligator Dress Oxford", "Fine Grade Tan Alligator Leather with Blond Trimming"; and
- (d) Represented watches composed of materials other than silver and of less value, though resembling silver in general appearance, as "Silverline" and "Nickle Silverline";

With the effect of misleading many of the consuming public into purchasing merchandise from it relying on the truth of such representations and with the capacity and tendency so to do, and with the effect of diverting business from and otherwise injuring and prejudicing competitors conducting their businesses without in anywise misrepresenting to purchasers and prospective purchasers the nature, character and value of the merchandise offered and sold by them, and with the tendency so to do:

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

Mr. William T. Kelley 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, an Illinois corporation engaged in the sale, by mail, of various kinds of merchandise direct to consumers in the various States, and with principal office and place of business in Chicago, 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 alleged, for about two years last past, made many false and misleading statements and representations concerning the nature, character, and value of articles depicted and described in its catalogues and the materials whereof composed, designating various articles and fabrics not composed of silk, a material derived from the cocoon of the silkworm, but of less value than silk though resembling the same in general appearance, as silk, as follows:

Hosiery composed wholly of rayon as "Silk", "Art Silk", and "New Silk";

Coverings of comforters composed wholly of cotton as "Silkoline";

Suits, dresses, and dress materials composed partly of silk and partly of cotton as "Silk", "Tussah Silk", and "Silk Faille Poplin";

Fabrics composed wholly of cotton as "Pongee" and "Cotton Pongee";

Dresses composed partly of rayon and partly of cotton as "French Rayon Art. Silk Lace Net Dress with Mercerized Pongee Slip", "An exclusive Bernard-Hewitt creation of fine quality French Rayon Art. Silk Lace Net. Beautiful Lace is fashioned of Lustrous Mercerized Pongee Slip of harmonizing color";

Hats composed partly of rayon and partly of cotton as "Chic, new and pretty Gypsy Hat of Genuine Silk Bengaline" and "Silk Sport Hat";

Dresses composed partly of rayon and partly of cotton as "Beautiful satin party dress", "Misses' sparkling party dresses" and "Rayon Art. Silk Dress";

Dresses made of materials other than silk as "Neutrisilk", "Fashioned from figured Neutrisilk, a beautiful new material which has the luster and wearing qualities of genuine silk".

Respondent further, as charged, misrepresented certain other articles as follows:

Garments, composed of wool, cotton, and silk as "All Wool" "Wool", and "Wool Tweed".

Sweaters composed entirely of cotton as "Wool Mixed Slipon Sweaters", "Part Wool";

Women's shoes made of imitation alligator hide as "Alligator Dress Oxford", "Fine Grade Tan Alligator Leather with Blond Trimming";

Watches composed wholly of material other than silver, and of much less value, though resembling silver in general appearance as silver, through use of such words and terms as "Silverreen" and "Nickle Silverreen"; and

Made numerous other false and misleading statements and representations of similar tenor concerning many of the articles dealt in by it.

Such false and misleading representations as charged have the capacity and tendency to and the effect of misleading many of the consuming public residing in various States into purchasing merchandise from it on account of their belief in the truth of such representations, and the further tendency to divert and effect of diverting business from and otherwise injuring and prejudicing competitors similarly engaged, without in anywise misrepresenting to purchasers and to prospective purchasers the nature, character, and value of their merchandise; 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, Bernard-Hewitt & Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent having entered its appearance herein, and having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by the respondent that the Federal Trade Commission may take such agreed statement of facts as the facts in this case, 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 agreed statement of facts to make its report in this proceeding, stating its findings as to the facts and its conclusions, and entering its order disposing of the proceeding; thereupon this proceeding came on for decision and the Commission having duly considered the record, and

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being duly advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with its principal office and place of business in the city of Chicago, in said State. It is engaged in selling direct to the consumer by mail, as hereinafter more fully set out, articles of merchandise of sundry sorts and kinds to said purchasers thereof residing respectively at points in various States of the United States. It causes said merchandise when so sold to be transported from its said place of business in the city of Chicago, Ill., into and through other States of the United States to said vendees at their respective points of residence. In the course and conduct of its said business respondent is in competition with other corporations, partnerships, and individuals engaged in the sale and transportation of sundry articles of merchandise in commerce between and among the various States of the United States.

PAR. 2. Respondent obtains orders for and makes sales of its said merchandise through and by means of certain catalogues issued by respondent in which catalogues respondent's said articles of merchandise are depicted and described, and the prices thereof set forth. Respondent sends and supplies said catalogues to customers and prospective customers among the consuming public to be used by them, and said catalogues are used by them in and about ordering and purchasing respondent's said merchandise.

PAR. 3. In its said catalogues referred to in paragraph 2 hereof respondent causes to be set forth many false and misleading statements and representations concerning the nature, character, and value of sundry of respondent's said articles of merchandise depicted and described in said catalogues and concerning the materials whereof said articles are made and composed, which statements and representations hold out said merchandise to be of a greater and higher value and quality than the actual value and quality thereof. Among said statements and representations are the following:

(a) That certain hosiery offered for sale and sold by the respondent as aforesaid is composed of silk, a material derived from the cocoon of the silkworm when in truth and in fact said hosiery is composed wholly of rayon. Said hosiery is of less value than silk and resembles same in general appearance. Respondent makes said representations by the use of the words and terms "Silk", "Art Silk", and "New Silk" in describing said hosiery.

(b) That the coverings of certain comforters offered for sale and sold by respondent are composed of silk, a material derived from the cocoon of the silkworm when in truth and in fact the coverings of said comforters are composed wholly of cotton. Said cotton coverings are of less value than silk and resemble same in general appearance. Respondent makes said representation by the use of the term "Silkoline" in describing said comforter coverings.

(c) That certain suits, dresses, and dress material offered for sale and sold by respondent are composed of silk, a material derived from the cocoon of the silkworm when in truth and in fact said suits, dresses, and dress materials are composed partly of silk and partly of cotton. Said cotton and silk merchandise are of much less value than silk and resemble same in general appearance. Respondent makes said representations by use of the words and terms "Silk", "Tussah Silk", and "Silk Faille Poplin".

(d) That certain fabrics offered for sale and sold by respondent are composed of pongee, a silk fabric derived from the cocoon of the silkworm, when in truth and in fact said fabrics are composed wholly of cotton. Said fabrics are of much less value than silk and resemble same in general appearance. Respondent makes said representations by the use of the words and terms "Pongee" and "Cotton Pongee".

(e) That certain dresses offered for sale and sold by the respondent are composed of silk, a material derived from the cocoon of the silkworm, when in truth and in fact said dresses are composed partly of rayon and partly of cotton. Said cotton and rayon merchandise are of much less value than silk and resemble same in general appearance. Respondent makes said representations by the use of the words and terms "French Rayon Art. Silk Lace Net Dress with Mercerized Pongee Slip", "An exclusive Bernard-Hewitt creation of fine quality French Rayon Art. Silk Lace Net. Beautiful lace is fashioned of lustrous Mercerized Pongee Slip of harmonizing color."

(f) That certain hats offered for sale and sold by respondent are composed of silk, a material derived from the cocoon of the silkworm, when in truth and in fact said hats are composed partly of rayon and partly of cotton. Said materials other than silk are of much less value than silk and resemble same in general appearance. Respondent makes said representations by use of the words and terms "Chic, new and pretty Gypsy Hat of Genuine Silk Bengaline" and "Silk Sport Hat".

(g) That certain dresses offered for sale and sold by the respondent are composed of satin, a silk material derived from the cocoon

of the silkworm, when in truth and in fact said dresses are composed partly of rayon and partly of cotton. Said materials other than silk are of much less value than silk and resemble same in general appearance. Respondent makes said representations by the use of the words and terms "Beautiful satin party dress", "Misses sparkling party dresses", and "Rayon Art. Silk Dress" in describing said dresses.

(h) That certain dresses offered for sale and sold by respondent are composed of silk when in truth and in fact said dresses are made of material or materials other than silk. Said materials other than silk are of much less value than silk and resemble same in general appearance. Respondent makes said representations by use of the term "Neutrisilk". "Fashioned from figured Neutrisilk, a beautiful new material which has the luster and wearing qualities of genuine silk."

(i) That certain garments offered for sale and sold by respondent are composed entirely of wool when in truth and in fact said garments are composed of wool, cotton and silk. Respondent makes said representations by the use of the words and terms "All Wool", "Wool", and "Wool Tweed".

(j) That certain sweaters offered for sale and sold by respondent are wool mixed, when in truth and in fact said sweaters are composed entirely of cotton. Respondent makes said representations by use of the words and terms "Wool Mixed Slipon Sweaters", "Part Wool".

(k) That certain women's shoes offered for sale and sold by respondent are composed of alligator leather, when in truth and in fact said shoes are composed of material or materials other than alligator leather. Respondent makes said representations by the use of the words and terms "Alligator Dress Oxford", "Fine Grade Tan Alligator Leather with Blond Trimming" in describing said shoes.

(l) That certain watches offered for sale and sold by respondent are composed of silver, when in truth and in fact said watches are composed wholly of materials other than silver. Said materials other than silver are of much less value than silver and resemble same in general appearance. Respondent makes said representations by use of the words and terms "Silverine" and "Nickle Silverine".

PAR. 4. Each of the false and misleading representations made by respondent as set forth in paragraph 3 hereof, has the capacity and tendency to and does mislead many of the consuming public residing in various States of the United States to purchase merchandise from

the respondent in and on account of their belief in the truth of such representation.

PAR. 5. There are among competitors of respondent, referred to in paragraph 1 hereof, including competitors who are engaged in selling direct to the consumer by mail in like manner as respondent, many who offer for sale and sell merchandise of the same and general kind and character as that offered for sale and sold by respondent, and who in no wise misrepresent to purchasers and prospective purchasers the nature, character, and value of the merchandise offered for sale and sold by said competitors, and respondent's above alleged acts and practices tend to and do divert business from and otherwise injure and prejudice said competitors.

CONCLUSION

The methods of competition set forth in the foregoing findings, under the conditions and circumstances set forth, are unfair methods of competition in interstate commerce and constitute a violation of section 5 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 TO CEASE AND DESIST

This proceeding having been heard upon the complaint of the Commission and an agreed statement of facts in lieu of testimony before the Commission in support of the charges stated in the complaint or in opposition thereto, and the Commission having made its findings as to the facts with its conclusion that respondent has been and is using unfair methods of competition in commerce in violation of the provisions of section 5 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 respondent Bernard-Hewitt & Co., its officers, agents, employees, and representatives cease and desist, in connection with the sale or offering for sale of merchandise in interstate commerce, from:

(a) Using the words "Silk", "Satin", "Pongee", "Cotton Pongee", "Tussah Silk", "Art Silk", "New Silk", "Silkoline", "Silk Faille Poplin", "French Rayon Art. Silk", "Mercerized Pongee", "Silk Bengaline" or "Neutrisilk" or any of them, alone, or in combination with any other word or words to represent, describe or advertise hosiery, covering of comforters, dresses, suits, hats, or other articles of wearing apparel, or fabrics, which are composed wholly

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of a material or materials other than silk, the product of the cocoon of the silkworm.

(b) Using the word "Silk" alone, or in combination with any other word or words to represent, describe, or advertise dresses, or other articles of wearing apparel, or fabrics, which are composed in part of silk and in part of cotton, or in part of silk and in part of rayon, or in part of silk and in part of other material or materials, unless the word "Silk" is accompanied by a word or words, equally conspicuous with it in character or type, clearly indicating that such dresses, articles of wearing apparel, or fabrics, are composed in part of a material or materials other than silk, the product of the cocoon of the silkworm.

(c) Using the words "Wool Mixed" or the word "Wool", or either of them, alone, or in combination with any other word or words to represent, describe or advertise sweaters, or other articles of wearing apparel, or fabrics, which are composed wholly of a material or materials other than wool.

(d) Using the words "All Wool", "Wool Tweed", or the word "Wool", or any of them, alone, or in combination with any other word or words to represent, describe, or advertise men's suits or other articles of wearing apparel, or fabrics, which are composed in part of wool and in part of cotton and silk, or in part of wool and in part of other material or materials, unless the word "Wool" is accompanied by a word or words, equally conspicuous with it in character or type, clearly indicating that such articles of wearing apparel, or fabrics, are composed in part of a material or materials other than wool.

(e) Using the words "Alligator Dress Oxford", "Fine Grade Tan Alligator Leather", or the word "Alligator", to represent, describe, or advertise women's shoes or other articles which are not made from the skins or hides of alligators.

(f) Using the word "Silverine" or the words "Nickle Silverine" to represent, describe, or advertise watches composed wholly of material or materials other than silver.

It is further ordered, That respondent, Bernard-Hewitt & Co., shall within 60 days after the service upon it of a copy of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

Report

IN THE MATTER OF
THE PROCTER & GAMBLE COMPANY AND THE PROCTER & GAMBLE DISTRIBUTING COMPANY

SUPPLEMENTAL REPORT, FINDINGS AS TO THE FACTS, AND ORDER
PURSUANT TO MANDATE OF COURT

Docket 852—December 28, 1928

Original findings and order in *Procter & Gamble Co. et al.*, 8 F. T. C. 143 et seq., relating to the sale of soap, soap powder, and soap chips containing no naphtha, but a petroleum distillate of kerosene amounting to one-half of 1 per cent by weight, in the case of the soap, and 1 per cent in the case of the powder, upon manufacture, and not sufficient in the case of any, substantially to enhance their value upon use by the public, and sold under brands, designations, and advertisements including and/or featuring the alleged naphtha content and the pretended merits of the products, by reason thereof, modified and supplemented, pursuant to court mandate and stipulations entered into subsequent and incidental thereto, and respondents required to cease and desist entirely from the use of the word naphtha or its equivalent in the brand name, description in advertising, or otherwise in offering for sale (1) soap products in the form of powder or chips, or (2) its "P & G the white naphtha soap", as made under the formula selected and submitted to the Commission, unless said soap shall have had incorporated therein, at time of manufacture, a quantity of naphtha equal to or in excess of 1.25 per cent by weight thereof; jurisdiction being retained over the proceeding to permit such changes in the order as changes in formula or method of manufacture may require or permit, while still insuring retention at time of sale to consumer, in naphtha named soaps and soap products sold by respondent in interstate commerce, of more than 1 per cent by weight of naphtha.

The above-entitled proceeding heretofore came on for hearing before the Federal Trade Commission, and the Commission, on August 6, 1924, made its findings as to the facts and conclusion, and caused its order to issue requiring the respondents above named, to cease and desist from the use of certain practices therein set out¹, whereupon the respondents applied to the United States Circuit Court of Appeals for the Sixth Circuit, to review such order, and said court, on January 5, 1926², by its opinion and decree affirmed paragraph 1

¹ See case reported in 8 F. T. C. at 143, relating to and condemning the use of the words "P & G The White Naphtha Soap", "Star Naphtha Washing Powder", and "P & G The White Naphtha Soap Chips" as the designations and brands for soap, soap powder, and soap chips containing no naphtha but the petroleum distillate consisting of kerosene, and amounting, at time of manufacture, to one-half of 1 per cent, and 1 per cent, in the case of the first two products, subject to complete or partial loss by volatilization subsequent to manufacture and prior to sale in the normal course of trade, to the consuming public, and not present in any of the three in an amount substantially to enhance their value in cleansing power to the public; and also relating to and condemning advertisements stressing the supposed efficiency and time and strength saving qualities of the products in question by virtue of their naphtha content.

² Reported in 11 F. (2d) 47.