

Complaint

IN THE MATTER OF
FARLEY HARVEY COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 1544. Complaint, Nov. 3, 1928—Decision, Feb. 11, 1929

Where a corporation engaged in the sale of dry goods at wholesale, designated, tagged, and labeled a cloth or fabric composed of approximately 60 per cent cotton and 40 per cent silk, and resembling silk in texture and general appearance, "silk chiffon" and/or "chiffon" and so sold the same to retailers by whom said fabric, in accordance with its purpose and plan, was offered to the consuming public thus labeled and was so represented; with the capacity and tendency to mislead and deceive many of the consuming public into believing said cloth to be made entirely of silk, and into purchasing the same in such belief, and with the effect of so doing, to the prejudice of the public and its competitors, many of whom manufacture and/or deal in similar or silk fabrics, as the case may be, accurately and truthfully labeled, advertised and branded:

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

Mr. Martin A. Morrison for the Commission.

Phipps, Durgin & Cook, of Boston, Mass., 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 Massachusetts corporation engaged in the sale of dry goods, including textile fabrics, at wholesale to retailers in various States, and with principal office and place of business in Boston, with naming product 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, engaged as above set forth, tags, labels, and designates a cloth or fabric dealt in by it, composed of approximately 60 per cent cotton and 40 per cent silk and resembling silk in texture and general appearance, silk chiffon and/or chiffon, and so offers and sells the same to its aforesaid retail dealer customers, by whom said fabric, thus labeled, is offered, distributed, and sold, with respondent's knowledge and intent, to the consuming public throughout the United States and further, also in accordance with respondent's purpose and as a direct result of its use of the terms in ques-

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tion, as above set forth, represented and described as "silk chiffon" and/or "chiffon".

The use by respondent, as charged, of said terms "silk chiffon" and "chiffon", as above set forth, has the "capacity and tendency to and does mislead and deceive many of the consuming public residing in various States of the United States by causing them to believe that the said cloth or fabric so labeled, designated, and described was made entirely of silk and to purchase" the same in such belief; all the prejudice of the public and of respondent's competitors, many of whom manufacture and/or sell and ship in interstate commerce fabrics made of cotton and silk, and others of whom similarly manufacture and/or sell fabrics made of silk, respectively accurately and truthfully advertised and branded.¹

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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, Farley Harvey Co., a corporation, charging it with the use of unfair methods of competition in violation of the provisions of said act.

Respondent having entered its appearance and filed its written return and answer to the complaint herein, admitted therein all allegations of such complaint, and alleged only the cessation of the methods of competition charged in said complaint after the issuance and service of said complaint. In said answer respondent consented that the Commission might proceed upon such complaint and respondent's said written return and answer to such complaint, to make full and final disposition of this case.

Thereafter, the chief counsel for the Commission filed in this case his written motion for the making of findings of fact by the Com-

¹ The complaint respectively defines the words "silk chiffon" as generally understood by the trade and consuming public, as follows:

"PAR. 3. The word 'silk' is generally understood by the trade and the consuming public to mean a product made entirely from the cocoon of the silkworm, and when the said word 'silk' is applied to a fabric it is understood by the trade and the consuming public to mean that the fabric so labeled and branded is made entirely from silk derived from the cocoon of the silkworm.

"PAR. 4. 'Chiffon' is a kind of soft gauzy silk material. The word 'chiffon' is generally understood by the trade and the consuming public to mean a product made entirely from the cocoon of the silkworm, and when the said word 'chiffon' is applied to a fabric it is understood by the trade and the consuming public to mean that the fabric so labeled and branded is made entirely from silk derived from the cocoon of the silkworm."

mission, and the issuance of an order against respondent herein to cease and desist from the method of competition charged in said complaint, upon the pleadings herein, to wit, upon said complaint and answer and the admissions and consent contained in such answer.

Thereafter, in pursuance of an order made and entered by the Commission, the secretary of the Commission served upon respondent a copy of said written motion, together with notice that the Commission had made and entered an order setting such motion for hearing at the office of the Commission at Washington, D. C., at an hour and upon a day fixed in such order and set forth in such notice.

The respondent having failed to appear or otherwise contest such motion, at the day and hour fixed in such notice or at any other time, the Commission on and after such time so fixed, without argument or brief thereon, took said motion under consideration and advisement. The Commission being now fully advised in the premises, sustains such motion so filed herein by the chief counsel, and now makes this its report in writing, stating its findings as to the facts and its conclusion of law thereon, as follows, to wit:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Massachusetts with its principal office and place of business in the city of Boston, in said State. It is engaged in the business of selling dry goods, including textile fabrics, at wholesale to retail dealers 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 Boston, Mass., into and through other States of the United States to said vendees at their respective points of location. 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 similar merchandise in commerce between and among various States of the United States.

PAR. 2. Respondent, in the course of its said business, is now and for more than one year last past has been offering for sale and selling to retail dealers located throughout various States of the United States for resale to the purchasing public a cloth or fabric whose content is composed of approximately 60 per cent cotton and 40 per cent silk. Said cloth or fabric resembles silk in texture and general appearance. Said cloth or fabric has been and is tagged, labeled, and designated by respondent as silk chiffon and/or chiffon, under which names and/or name respondent offers for sale and sells and

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distributes the same to its aforesaid retail dealer customers. Said retail dealers thereafter offer for sale, distribute, and sell and deliver said cloth or fabric with said label silk chiffon and/or chiffon attached thereto to the consuming public throughout the United States; and also said retail dealers thereafter offer for sale, display, sell, and deliver such cloth or fabric with said silk chiffon and/or chiffon 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 represent and describe as silk chiffon and/or chiffon the cloth or fabric sold by it as aforesaid, all in accordance with respondent's purpose, and as a direct result of its use of the terms silk chiffon and chiffon in naming, describing, and representing its cloth or fabric as aforesaid.

PAR. 3. The word "silk" is generally understood by the trade and the consuming public to mean a product made entirely from the cocoon of the silkworm, and when the said word "silk" is applied to a fabric it is understood by the trade and the consuming public to mean that the fabric so labeled and branded is made entirely from silk derived from the cocoon of the silkworm.

PAR. 4. "Chiffon" is a kind of soft gauzy silk material. The word "chiffon" is generally understood by the trade and the consuming public to mean a product made entirely from the cocoon of the silkworm, and when the said word "chiffon" is applied to a fabric it is understood by the trade and the consuming public to mean that the fabric so labeled and branded is made entirely from silk derived from the cocoon of the silkworm.

PAR. 5. There are among competitors of respondent referred to herein many who manufacture and/or sell and ship in interstate commerce fabrics made of cotton and silk which fabrics are accurately and truthfully labeled, advertised, and branded. There are among competitors of respondent others who manufacture and/or sell and ship in interstate commerce fabrics made of silk, which fabrics are accurately and truthfully labeled, advertised, and branded.

PAR. 6. The use by the respondent of the terms "silk chiffon" and "chiffon", as set out in the complaint herein, has the capacity and tendency to and does mislead and deceive many of the consuming public residing in various States of the United States by causing them to believe that the said cloth or fabric so labeled, designated, and described was made entirely of silk and to purchase said cloth or fabric in that belief.

PAR. 7. The above alleged acts and practices of the respondent are all to the prejudice of the public and of competitors of respondent, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

CONCLUSION

The acts and practices of respondent, Farley Harvey Co., alleged in said complaint and set forth in the foregoing findings as to the facts, 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 by the Federal Trade Commission upon the complaint of the Commission and the written return and answer to such complaint filed by respondent, a corporation, and upon the admissions made and consent given by respondent in such answer, and the Commission having accordingly made its report in writing stating its findings as to the facts and its conclusion of law thereon, that the acts and practices of respondent, Farley Harvey Co., alleged in the complaint herein and set forth in said findings as to the facts, 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",

It is now ordered, By the Federal Trade Commission that respondent, Farley Harvey Co., a corporation, its officers, agents, and employees, do cease and desist from:

(1) Selling or offering for sale in interstate commerce a cloth or fabric the content of which is composed of approximately 60 per cent cotton and 40 per cent silk, as or under the name or designation of "silk chiffon" and/or "chiffon", or bearing or accompanied with tags, labels, or other means of designation as or in or under the name or designation of "silk chiffon" and/or "chiffon".

(2) Selling or offering for sale in interstate commerce a cloth or fabric, as or under the name or designation of "silk chiffon" and/or "chiffon", or bearing or accompanied with tags, labels, or other

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means of designation as or in or under the name or designation of "silk chiffon" and/or "chiffon", unless the content of such cloth or fabric shall be composed wholly of silk, to wit, of the material that is derived from the cocoon of the silkworm.

And it is further ordered, That respondent, Farley Harvey Co., shall within 60 days next after service upon it of a copy of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which such respondent has complied, and is complying, with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

LEON E. JACOBS AND MORRIS JACOBS, COPARTNERS,
TRADING UNDER THE NAME & STYLE OF LEON E.
JACOBS AND BROTHER

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

Docket 1553. Complaint, Jan. 2, 1929—Decision, Feb. 11, 1929

Where a new species of cotton cloth made in England and of distinctive appearance had come to be known in the United States as "English Broadcloth", to be very popular and in high repute, "English Broadcloth" shirts had come to be in great demand, and the words "Imported English" and "English" applied to said type of fabric had come to denote to the purchaser that the same was made in England, and, to a large proportion of retailers and a substantial portion of the consuming public, was of excellent quality and had a recognized value; and thereafter a firm engaged in the manufacture and sale of men's shirts, purchased a similar cloth manufactured by American manufacturers under the name "broadcloth", and sold shirts made thereof to their retail customer dealers as of "English Broadcloth" and labeled the same "Imported Knox English Broadcloth" and/or "English Broadcloth", with the capacity and tendency to deceive retail dealers and a substantial portion of the purchasing public into believing the aforesaid shirts to be made of material made in and imported from England:

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 respondents, individuals engaged as partners in the manufacture of cotton fabrics purchased from American mills, into men's shirts, and in the sale thereof to retailers throughout the various States, and with principal place of business in New York City, with misrepresenting product 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 respondent sold as "English Broadcloth". shirts made of a cotton fabric manufactured by American mills, termed "broadcloth", and