

Complaint

IN THE MATTER OF

N. FLUEGELMAN & COMPANY, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914;

Docket 1491. Complaint, Jan. 13, 1928—Decision, Apr. 2, 1929

Where a corporation engaged as a converter and wholesale distributor of cotton fabrics, named, advertised, offered and sold as "Satinmaid" a mercerized cotton fabric, dealt in by it as above set forth, and so labeled the board ends affixed to the cards or boards around which the fabric was wound, and the paste tickets, hanging tags, salesmen's color cards and other descriptive matter used in connection with the sale and distribution thereof, together with the words "A Satinized Fabric," and also the words, after a time, "A Cotton Fabric," in its advertisements and on the aforesaid descriptive matter used in connection with the sale thereof, but in a less conspicuous fashion; with the capacity and tendency to mislead and deceive buyers into believing said fabric to consist in whole or in part of silk and to induce its purchase in such belief, and with the effect of furnishing retailers with the means enabling them to mislead and deceive ultimate buyers into purchasing the same in the aforesaid belief, and the tendency to injure and divert trade from competitors dealing in cotton fabrics, silk fabrics, or both, or fabrics of both cotton or silk:

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

Mr. James M. Brinson for the Commission.

Mr. Henry Fluegelman of New York City and *Mr. Roger O'Donnell*, of Washington, D. C., 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 as a converter of cotton fabrics, and wholesale distributor thereof in interstate commerce, to purchasers in States other than New York, and with principal place of business in New York City, with naming product misleadingly, 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.

Respondent, as charged, engaged as above set forth, designated as "Satinmaid" a mercerized cotton fabric, prepared and sold by it, containing no satin or silk, a product of the cocoon of the silkworm,

but composed wholly of cotton, and so advertised the same in publications of general circulation among various States, and labeled the cards or boards upon which said fabric was wound, and on its letter-heads and in other advertising and labels designated and described said product as "Satinized."

The use by respondent of the words "Satinmaid" and/or "Satinized," as charged, in advertising, labeling, and selling its aforesaid product, as above set forth, has the capacity and tendency to and does mislead purchasers of said fabric into the belief that it is composed in whole or in part of satin or silk, the product of the cocoon of the silkworm, and to induce purchasers to purchase the same in that belief; all to the prejudice of the public and of respondent's competitors, among whom there are concerns and individuals who manufacture, sell, and transport in commerce fabrics composed wholly of cotton and so represented, or without any representation as to composition, and others making fabrics composed wholly or in part of satin or silk or both.

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 its complaint upon N. Fluegelman & Co., Inc., hereinafter called respondent, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered its appearance and filed its answer to the complaint, formal hearings were had thereon before an examiner of the Commission, theretofore duly appointed, and testimony, documentary evidence, and exhibits were offered and received and duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for hearing before the Federal Trade Commission on such complaint and answer and on the testimony, evidence, and exhibits on file and on the briefs and arguments of counsel, and the Federal Trade Commission having duly considered the same, now makes this its report in writing and states its findings as to the facts and conclusion as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, N. Fluegelman & Co., Inc., has been for several years last past, and now is a corporation organized and existing under and by virtue of the laws of the State of New York,

with its principal office and place of business in the city of New York and State aforesaid. It has been and is engaged in business as a converter of cotton fabrics, and as wholesale distributor of same in interstate commerce, causing said product when sold to be transported from its said place of business to purchasers in the various other States of the United States. In the course and conduct of said business respondent is now and at all times hereinafter mentioned was in competition with individuals, partnerships, and corporations engaged in the sale and distribution of fabrics in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of its business respondent has offered for sale, through advertisements in publications of general circulation, and through traveling salesmen, and has sold, in the various States of the United States, a certain mercerized cotton fabric under and by the trade name "Satinmaid". Said product when sold and delivered by respondent has had so-called board ends affixed to the cards or boards around which the fabric was wound, containing said trade name, accompanied by the words "A Satinized Fabric", in one or more places, which also have appeared on paste tickets, hanging tags, salesmen's color cards, and other descriptive matter used in connection with the sale and distribution of said fabric. On or about December 7, 1925, respondent commenced and has since continued the practice of placing in its advertisements and on the aforesaid descriptive matter so used in connection with the sale and distribution of said fabric, the words "A Cotton Fabric", either above or below the words "Satinmaid", but in letters considerably smaller, except in the so-called color cards used by traveling salesmen to exhibit the various colors in which respondent offers said fabric for sale. On these color cards the words "A Cotton Fabric" appear in letters as large as, but less conspicuous than, those in which the trade name "Satinmaid" is expressed.

PAR. 3. The word "satin" when used to describe or designate a fabric means that such fabric is composed wholly of silk woven in a peculiar manner so as to impart a high luster to the surface of the fabric. The description or designation by respondent of its cotton fabric as "Satinmaid," a word composed of the word "satin" and of the word "maid", which has the same phonetic significance and effect as the word "made", has had and has the capacity and tendency to mislead and deceive buyers into the belief that such cotton fabric consists wholly or in part of silk and to induce its purchase in such belief. Its sale by respondent with labels, paste tickets, hanging tags, board ends, and color cards bearing the said trade

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name "Satinmaid", as described in paragraph 2 hereof, furnishes retail dealers with the means by which they have been and are enabled to mislead and deceive ultimate buyers into its purchase in the belief that said fabric consists either in whole or in part of silk.

PAR. 4. There are now and for several years last past have been other individuals, partnerships, and corporations engaged in selling, and describing or designating as such, cotton fabrics, silk fabrics, or both, or fabrics containing both cotton and silk, in competition with respondent among or between the various States of the United States, and the foregoing practices of respondent have had and have the capacity and tendency to divert trade from them to respondent and otherwise to injure them.

CONCLUSION

The practices of respondent under the conditions and circumstances described in the foregoing findings as to the facts are unfair methods of competition in interstate commerce and constitute a violation 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, the answer of the respondent, the testimony and evidence submitted, briefs and arguments of counsel, and the Commission having made its report stating its findings as to the facts with its conclusion that respondent, N. Fluegelman & 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, N. Fluegelman & Co., Inc., its officers, agents, servants, and employees, cease and desist, directly or indirectly, from using the word "Satinmaid", or any word or words, or combination of words, embracing the word "satin" as a trade name for, or to describe or designate a cotton fabric offered for sale or sold in interstate commerce.

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

Complaint

IN THE MATTER OF
RALADAM 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 1496. Complaint, Feb. 29, 1928—Decision, Apr. 13, 1929.

Where a corporation engaged in the sale of an alleged obesity cure in tablet form, with ingredients, among others, of thyroid and certain powerful laxatives, and with a medicinal virtue based, as claimed, principally upon the former,

Represented in advertisements in newspapers, magazines, periodicals, and other publications of general circulation, and on labels or in circulars and printed matter wrapped about, folded within or attached to the boxes or containers of said tablets, that said preparation was a safe, convenient, pleasant, effective, and scientific method for the treatment of obesity, resulting from and based on many years of scientific research in the United States and abroad;

The facts being that thyroid, popularly believed of great value for the reduction of fat, is a powerful agent liable to produce radical, harmful changes to the users, that the preparation is not the result of any scientific research, knowledge, or accuracy, and can not be used safely by any purchaser without previous consultation with a competent medical adviser, or without discomfort, inconvenience, or dangerous or harmful results, except under the direction of such a person, will not act with uniformity in all cases, or be generally effective for reducing excess flesh without imperiling the health of a substantial number, and, used without further information or advice than furnished by it, is liable to create the laxative habit in the user thereof and to have an injurious effect upon the person concerned;

With the tendency and capacity to mislead and deceive the purchasing public into believing the preparation in question to constitute a scientific and accurate treatment for reducing, resulting from many years of scientific research, and to afford a safe, convenient, effective, and dependable remedy for use by any and all purchasers, and to induce the purchase thereof in such beliefs:

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

Mr. E. J. Hornibrook for the Commission.

Stevenson, Butzel, Eaman & Long and *Mr. R. M. Connor*, of Detroit, Mich., and *Mr. Robert E. Cantwell, jr.*, of Chicago, Ill., 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 Michigan corporation engaged in the manufacture of