

Complaint

12 F. T. C.

IN THE MATTER OF

SAM RHEINGOLD, AN INDIVIDUAL TRADING AS MAID-
RITE DRESS COMPANYCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1582. Complaint, Mar. 19, 1929—Decision, May 27, 1929*

Where an individual engaged in the sale of women's dresses direct to the consumer, in advertising the same described certain dresses as "This regular \$10 Style Satin Finish Dress for only \$1.69", "Silk Lustre Effect Pongee—Smashing Prices \$7.50 down to \$1.69", "\$10 Style Silk Lustre Charmeuse Dress \$1.95", "This \$5 Style for only \$1.69", "This regular \$7.50 Silk Pongee Lustre Dress for only \$1.69" and "Wool Embroidered Flannel Dress", the facts being that the first three dresses referred to, and last but not one, contained no silk, that the so-called flannel dress contained no wool other than certain wool yarn embroidery, and that the implied reduced prices were the usual and customary prices for the garments in question; with the capacity and tendency to mislead and deceive a substantial part of the purchasing public into believing the garments to be respectively composed of silk and wool, and to be a better quality and usually sold for a higher price than indicated by the price at which offered, and to induce the purchase thereof in such mistaken beliefs:

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

Mr. R. H. Winn 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 and distribution of women's dresses to purchasers in other than the State of origin of such shipments, and with principal office and place of business in Philadelphia, with advertising falsely or misleadingly as to composition and prices, 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 advertisements in newspapers and periodicals of general circulation among various States, describes, represents, and refers to certain dresses containing no silk as "Satin Finish Dress", "Silk Lustre Charmeuse Dress", and "Silk Pongee Lustre Dress"; certain dresses containing no wool as "Biggest Bargain Ever Advertised by us in This Beautiful Jersey Dress"; and certain dresses containing no wool except for certain wool yarn embroidery as "Wool Embroidered Flannel Dress"; with the effect of

misleading and deceiving the purchasing public into believing said dresses first referred to to be manufactured of silk and said other dresses to be composed of wool and of inducing them to purchase the aforesaid various dresses in such beliefs and with the capacity and tendency so to do.¹

Respondent further, as alleged, in his advertisements in newspapers and periodicals of general circulation misrepresents the regular contemplated prices of his products by such statements as: "Let us send you this regular \$10 style satin finish dress for only \$1.69"; "Silk lustre effect pongee—Smashing prices \$7.50 down to \$1.69"; "\$10 style silk lustre charmeuse dress \$1.95"; "This \$5 style for only \$1.69"; and "Let us send you this regular \$7.50 silk pongee lustre dress for only \$1.69"; when in truth and in fact the aforesaid and/or similar dresses had not theretofore been sold nor were they intended to be sold at the prices represented in said advertisements or advertising matter and the prices at which the dresses were offered for sale were not in truth and in fact reductions as represented, but were the usual and customary prices at which the aforesaid dresses were and are sold in the course of trade."

According to the complaint "the above alleged acts and practices of respondent are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

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, Sam Rheingold, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent thereafter having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed

¹ As alleged in the complaint—

The words "Satin", "Charmeuse", and "Pongee" as used in said advertisements signify to and are understood by a substantial part of the purchasing public to represent or describe fabrics composed wholly or in part of silk.

The word "Jersey" used in said advertisements signifies to and is understood by a substantial part of the purchasing public to represent or describe a fabric composed of wool.

The word "Flannel" used in said advertisements signifies to and is understood by a substantial part of the purchasing public to represent or describe a fabric composed entirely of wool.

Findings

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by the respondent and the Federal Trade Commission that the Federal Trade Commission shall take such agreed statement as to the facts in this case and in lieu of testimony and proceed forthwith with said agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission having duly considered the record and being now fully advised in the premises makes this its report, stating its findings as to the facts:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Sam Rheingold, is an individual doing business under the name and style of Maid-Rite Dress Co., with its principal places of business in the city of Philadelphia, in the State of Pennsylvania. For a period of one year prior to March 19, 1929, 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 circulated in interstate commerce and received from such consumers through the United States mail 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 at all times 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 certain of said dresses respectively in the following language:

Let us send you this regular \$10 style satin finish dress for only \$1.69.

Silk lustre effect pongee—Smashing prices \$7.50 down to \$1.69.

\$10 style silk lustre charmeuse dress \$1.95.

This \$5 style for only \$1.69.

Let us send you this regular \$7.50 silk pongee lustre dress for only \$1.69.

Wool embroidered flannel dress.

The dresses described above as “\$10 style satin finish dress”, “Silk lustre effect pongee”, “Silk lustre charmeuse”, “Silk pongee lustre”, contained no silk, but were composed entirely of a product or products other than silk.

The dresses described above as "Wool embroidered flannel dresses" contained no wool whatsoever except for certain wool yarn embroidery embroidered thereon, but were otherwise composed of a product or products other than wool.

The word "flannel" signifies and means, and is generally understood by the public to signify and mean a fabric or material composed of wool.

The words "pongee" and "charmeuse" signify and mean, and each is generally understood by the public to signify and mean a fabric derived from the product of the cocoon of the silkworm.

The dresses described above as "\$10 style—\$1.69", "\$7.50 down to \$1.69", "\$10 style \$1.95", "\$5 style \$1.69", "\$7.50 dress for only \$1.69", referred to dresses which were not actually sold nor were they contemplated to be sold in the general course of trade at the prices represented in the said advertisements; and the prices at which the dresses were offered for sale were not reductions, but were the usual and customary prices at which the aforesaid dresses were sold in the course of trade.

PAR. 3. The use of the terms "satin finish", "silk lustre effect pongee", "silk lustre charmeuse", "silk pongee lustre", 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 erroneous belief that said dresses are composed of silk, and to induce customers to purchase the same in that belief.

PAR. 4. The use of the word "flannel" 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, and to induce purchasers to purchase the same in that belief.

PAR. 5. The quotation of prices which indicate that the prices at which the dresses are offered for sale are actual and bona fide reductions, when in fact there has been no such reduction as is implied, 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 actually of a better quality and usually sell for a higher price than the selling price indicates and to induce purchasers to purchase the same in that belief.

Order

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CONCLUSION

The practices of the said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a violation of section 5 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 and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent 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 respondent, Sam Rheingold, his agents and employees cease and desist, in connection with the sale or offering for sale of women's dresses in interstate commerce, from:

(a) Using the words "satin", "pongee", or "charmeuse" to represent and describe dresses which are composed of a material or materials other than silk, the product of the cocoon of the silkworm;

(b) Using the words "wool" or "flannel" 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;

(c) Quoting prices which indicate that the prices at which the dresses are offered for sale are actual and bona fide reductions, when in fact the dresses, were not actually sold, nor were they contemplated to be sold in the course of trade at the prices represented, the prices at which the dresses were offered for sale being the customary prices at which the dresses were and are sold in the course of trade.

It is further ordered, That the respondent within 60 days after the date of the service upon him 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 hereinbefore set forth.

Syllabus

IN THE MATTER OF

HOBOKEN WHITE LEAD & COLOR WORKS, 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 1565. Complaint, Feb. 19, 1929—Decision, June 7, 1929

Where a corporation engaged in the manufacture of paint and paint materials and in the sale thereof to dealers and consumers through letters, telephonic, and other communications, salesmen and agents, and advertisements in circulars, pamphlets, magazines, newspapers, and similar publications of general circulation,

- (a) Conspicuously branded or labeled as "White Lead" containers of one of its products resembling white lead in general appearance of color, consistency and commercial packing, but inferior thereto in quality, and so advertised, represented, offered, and sold the same, and as a product with pigment composed wholly or in greater part of lead carbonate or lead sulphate; the facts being that the pigment thereof contained approximately 80 per cent of barium sulphate, together with a small percentage of lead sulphate, zinc, and siliceous matter; with the capacity and tendency to cause dealers therein to offer, sell, and distribute the same under the afore-said name and designation and as and for white lead and a product composed as above set forth, and to mislead and deceive a large and substantial part of the purchasing public in respect of the composition thereof and cause its purchase as and for white lead or a product with pigment chiefly composed as above set forth, and containing neither barium sulphate nor any substantial quantity of other inert material; and with the effect of so doing;
- (b) Conspicuously branded as "Zinc Lead" a paint material and so represented, advertised, described and sold the same, and as a product with a pigment composed in whole or in greater proportion of lead carbonate or lead sulphate or zinc or a mixture thereof, the facts being that said product consisted principally of barium sulphate and similar inert materials, contained no lead carbonate, and only a small proportion of zinc and lead sulphate, and was inferior in quality to zinc lead as understood by the trade and purchasing public; with the capacity and tendency to mislead and deceive a substantial part of said trade and public and cause the purchase by them of said product as and for zinc lead or with the pigment thereof composed as above set forth, and with the effect of so doing;

With the result of placing in the hands of dealers in said products a means for defrauding and deceiving the public, and of unfairly diverting trade from competitors dealing without misrepresentation in genuine white lead and zinc lead and similar materials with pigment composed of lead carbonate or lead sulphate and zinc or a mixture thereof; and with the capacity and tendency so to do;

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

Mr. Henry Miller for the Commission.