

## Complaint

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IN THE MATTER OF  
KEMPER SILK COMPANY, INC.

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

*Docket 1685. Complaint, July 15, 1929—Decision, Jan. 5, 1931*

Where a corporation engaged in the designing and sale of fabrics to retail dealers, garment manufacturers, and jobbers,

- (a) Designated a cotton and rayon fabric somewhat resembling silk, "Taffet-Ray", and employed said name in describing such fabric in advertisements in newspapers and trade journals, and on the packages in which shipped to purchasers, counter display cards furnished for retailers, and labels supplied to garment makers, with capacity and tendency to deceive purchasing public into believing such fabric to be taffeta or silk;
- (b) Designated a fabric composed entirely of rayon, resembling satin, "Sparkal Satin", and employed such name in designating such fabric in advertising and labeling same, as above set forth, with capacity and tendency to deceive purchasing public into believing such fabric to be made entirely of silk; and
- (c) Employed phrase "Creators and Manufacturers of Artificial Silk Fabrics", upon its letterheads and other trade literature, notwithstanding fact that it did no manufacturing, but had such fabrics as it created or designed, made by manufacturers; with tendency and capacity to deceive purchasing public and induce purchase of its products as and for those bought directly from a manufacturer at a saving in cost, and to divert trade unfairly from competitors:

*Held*, That such practices, under the circumstances set forth, were to the injury and prejudice of the public and competitors, and constituted unfair methods of competition.

*Mr. Alfred M. Craven* for the Commission.

*Kahn & Zorn*, of New York City, 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 with principal place of business in New York City, engaged in the sale of textile fabrics to retailers and to garment makers for use in making dresses, underwear, slips, and other articles, with naming product misleadingly, misrepresenting business status, 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, for more than two years last past has named a fabric composed of cotton and rayon, but resembling taffeta in appearance, "Taffet-Ray" and has used said trade name to designate said fabric in its advertisements in newspapers of general circulation and on counter display cards furnished to retailers for the purpose of advertising the same, and on the packages in which shipped to the purchasers and on labels furnished by it to garment makers, to be affixed to the garments, and by other means and methods, and has similarly used the trade name "Sparkal Satin" to designate a fabric composed entirely of rayon, employing the same practices in connection therewith, as above set forth, with the tendency and capacity to deceive the purchasing public and induce the purchases by them of said fabrics as and for fabrics composed of silk, a product of the cocoon of the silkworm, understood by the public generally as signified and meant by the words "Taffeta" and "Satin".

Respondent further, as charged, neither owning, operating nor controlling any factory or mill, making the articles offered by it, represents upon its letterheads and other trade literature that it is a manufacturer, with tendency and capacity to deceive retailers and others into believing that persons dealing with respondents are buying directly from the manufacturer and thereby eliminating the profits of middlemen, and to cause dealers and others to purchase their merchandise in that belief.

Said acts and practices, as charged, are all 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" (38 Stat. 719), the Federal Trade Commission, on the 15th day of July, 1929, issued and thereafter served its complaint against the respondent Kemper Silk Co., Inc., 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 and filed an answer to the said complaint, a hearing was had before a trial examiner theretofore duly appointed, and testimony was heard and evidence re-

## Findings

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ceived in support of the charges stated in the complaint, and in opposition thereto. Thereafter this proceeding came on regularly for decision and the 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 and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Kemper Silk Co. is now and has been since 1927 a corporation duly organized and existing under the laws of the State of New York with its principal place of business at New York City in said State engaged in the business of selling fabrics to retail dealers, garment manufacturers and jobbers throughout the United States. It also is a designer of weaves for some of the fabrics sold by it. It causes the fabrics sold by it to be transported and shipped in interstate commerce to the purchasers thereof at their various places of business in the several States of the United States. In the conduct of its said business, respondent is and has been since its incorporation, in competition with other individuals, firms, and corporations engaged in the sale of similar fabrics in interstate commerce between and among the several States.

PAR. 2. In the course and conduct of its said business, respondent sells a fabric composed of cotton and rayon resembling to some extent silk in appearance, under the trade name "Taffet-Ray", which trade name is used by respondent to designate and describe said fabric in advertisements inserted in newspapers and trade journals, on packages in which the fabric is shipped to the purchasers, on counter display cards furnished to retail dealers for the purpose of advertising said fabric, and on labels furnished by respondent to garment makers to be affixed to garments made of said fabrics and by other means and methods. The said fabrics and garments made therefrom are sold to the buying public under the description "Taffet-Ray".

PAR. 3. Respondent in the course and conduct of its said business and up to about the time of the issuance of the complaint herein, July 15, 1929, sold a fabric composed entirely of rayon resembling satin in appearance, under the trade name "Sparkal Satin". It used said trade name to describe and designate said fabric by the same means and methods mentioned in paragraph two hereof, relative to "Taffet-Ray".

PAR. 4. In the course and conduct of its said business the respondent has imprinted upon its letterheads and other trade literature circulated among its customers and prospective customers, the phrase "Creators and manufacturers of artificial silk fabrics". The re-

spondent, while it has created or designed certain fabrics and has had them manufactured by manufacturers, is not a manufacturer and is not entitled to describe itself as such. The use of the word "manufacturers" by respondent has a tendency and capacity to deceive the purchasing public and to induce them to purchase the fabrics sold by respondent in the belief that they are purchasing direct from a manufacturer at a saving in cost. The respondent at the hearing announced its intention of discontinuing the use of this word, and consented that the Commission might make a cease and desist order requiring the discontinuance thereof.

PAR. 5. The word "satin" used by respondent in the description "Sparkal Satin" disassociated from any word or words which indicate the material signifies to the trade and to the public, silk, the product of the cocoon of the silkworm. The use of the said trade name "Sparkal Satin", as descriptive of a fabric made of rayon, is misleading and has the capacity and tendency to deceive the purchasing public into the belief that the fabric of which the phrase is descriptive, is made entirely of silk. The respondent discontinued the sale of the fabric in question and of the description "Sparkal Satin", at or about the time of the issuance of the complaint herein, and consented at the hearing that the Commission might make an order prohibiting the use of said description as applied to a material made of rayon.

PAR. 6. The trade-mark and description "Taffet-Ray" is misleading and has the capacity and tendency to deceive the purchasing public into the belief that the fabric of which it is descriptive, is taffeta or silk. The word "taffeta" may mean a distinctive type of construction or weave, but when used alone, it signifies and means to the trade and the purchasing public, silk, the product of the cocoon of the silkworm. The respondent has consented on the record that the Commission may issue an order prohibiting the use of such description, unless accompanied by word or words clearly indicating that the fabric trade-marked as "Taffet-Ray" is not a silk fabric.

PAR. 7. The methods of competition mentioned in paragraphs 2, 3, 4, 5, and 6 hereof are unfair to the buying public and competitors of respondent and have the capacity and tendency to divert trade from such competitors.

#### CONCLUSION

The practices of said respondent, under the conditions and circumstances described in the foregoing findings, are to the injury and prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce and constitute a viola-

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tion 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 respondents, the testimony and evidence introduced, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and 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 the respondent, Kemper Silk Co., Inc., its officers, agents, and employees in connection with selling or offering for sale of its merchandise in interstate commerce between and among the several States of the United States and in the District of Columbia, do cease and desist from:

(a) Representing on its letterheads, advertising, or otherwise that it is a manufacturer unless and until it owns or operates a mill or factory where its merchandise is made.

(b) Using the phrase "Sparkal Satin." as descriptive of a fabric not made entirely of silk.

(c) Using the word "Taffet-Ray", or the word "Taffeta" as a trade name for or to describe or designate a cotton and rayon fabric unless in connection therewith and in every instance where such description appears, there also appear word or words clearly indicating that the fabric is not silk, such as, "A cotton and rayon fabric", "Made of cotton and rayon", "Not silk", or equivalent terms.

*It is further ordered*, That the said respondent shall, within 30 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.

## Syllabus

IN THE MATTER OF  
THE RUBBER CITY PAINT COMPANY AND THE BELL  
PAINT 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 1757. Complaint, Feb. 7, 1930—Decision, Jan. 5, 1931*

Where two corporations, under common family control, engaged in sale by mail order of certain roofing preparations,

- (a) Employed word "manufacturers" on letterheads and falsely represented to purchasers and prospective purchasers that aforesaid products were made by them, and through advertising literature referred to their method of direct sales whereby profits of jobbers, retailers, and salesmen were eliminated, notwithstanding fact that said products were made by and purchased from a separate third company likewise thus controlled, and, to a small extent, from other manufacturers; and
- (b) Included words "liquid asbestos roofing" in designation of their aforesaid products in circulars, cards, and other advertising matter and represented asbestos content thereof as "the finest indestructible rock asbestos" and the product as "fully guaranteed to wear for ten years", and as asbestos product, facts being that said content, of approximately 5.7 per cent, was not sufficient to assist in preventing early disintegration, crawling, and cracking of the paint, to bind and hold the film together, or to add appreciably to the durability thereof, and that it was not composed of finest indestructible rock asbestos, nor an asbestos product, and durability thereof was from 3 to 5 years instead of the 10 claimed;

With tendency and capacity to mislead and deceive purchasers into believing said products to have content of sufficient asbestos to accomplish purpose for which ordinarily employed in roofing compounds, to be fireproof, and to have a life of 10 years, and that in purchasing same from them they were buying from the manufacturer and eliminating middleman's profit, and with tendency and capacity to divert to themselves trade of competitors who do not use such methods:

*Held*, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

*Mr. PGad B. Morehouse* for the Commission.

*Mr. Ralph Blue*, of Cleveland, for respondents.