

Syllabus

IN THE MATTER OF
EBROCLO SHIRT 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 1883. Complaint, Dec. 11, 1930—Decision, Nov. 16, 1931

Where a corporation engaged principally in the sale of its so-called "Ebroclo" shirts, and, to a lesser extent, of underwear, hosiery, merchandise and other articles of wearing apparel, and, excepting less than 5 per cent of its shirts, doing no manufacturing,

- (a) Captioned a folder distributed by it among the numerous house to house canvassers through whom it sold aforesaid articles, "HOME OF EBROCLO SHIRTS," and displayed thereon a representation of a large 6-story building, and made such statements therein in connection with cuts showing various manufacturing operations as "Ebroclo cutting department," "portion of Ebroclo sewing department," and such representations as "Backed by the Ebroclo company delivering shirts of the very best quality * * * direct from factory to wearer—the shortest way—You can save your customers money," "There are many irresponsible concerns imitating our methods. They are jobbers and not manufacturers," "We are one of the largest manufacturers of shirts in this country, selling *direct from factory to wearer*," fact being building in question and various pictures displayed within the folder showing cutting, sewing and other operations were those of a manufacturer from whom it principally bought the shirts dealt in by it;
- (b) Provided its aforesaid canvassers with order blanks and sample books respectively containing the words "from factory to you" and "factory to wearer," and in form letters sent to its representatives and on credit and debit slips employed by it made use of the words respectively "direct from the manufacturer" and "direct to wearer," and acquiesced in use of letterheads by a district agent featuring the words "factory to wearer,"
- (c) Listed itself in the classified section of the telephone directory in the bold face, paid advertising, as "SHIRTS Ebroclo Shirt Mfg. Co., Inc., Mfrs. Shirts, Underwear and Pajamas," etc.;
- (d) Featured the alleged English broadcloth composition of its shirts, emphasizing the quality and properties of said fabric and setting forth that it was "in greater demand than any other shirting material known," that it sold nothing but "GENUINE ENGLISH BROADCLOTH SHIRTS," and that the name "Ebroclo" employed by it was a derivative of and stood for English broadcloth, facts being material employed was not English broadcloth, nor cloth made in England;
- (e) Employed the words "nu-silk," "new silk," and "silk" in referring to and describing the ties and hosiery dealt in by it, and acquiesced in such statements as "new silk ties," "men's silk hose," and "FACTORY TO WEARER" by its district representative or manager and set forth in its trade organ a depiction of the "EBROCLO NU-SILK Plant Exclusively—every foot of the floor space devoted to taking care of *your business*. Every item * * * sold '*direct to the wearer*' only," fact being words "Nu Silk"

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or "Nu Silk Co." represented a trade name employed by its president in conduct of a neckwear and hosiery business doing no manufacturing, but selling articles dealt in through it, as a selling agency, and said articles were wholly rayon in some cases, and in substantial part composed thereof in others, and in case of only an inconsiderable percentage thereof were of silk;

With capacity and tendency to mislead and deceive ultimate purchasers of products concerned into believing in truth of aforesaid false and deceptive representations relating to its being a manufacturer selling articles above set forth direct to wearer, and dealing in shirts composed of English broadcloth, and in neckwear and hosiery composed of silk, and with effect of diverting trade from competitors truthfully advertising and branding their products, and with capacity and tendency so to do:

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

Mr. Richard P. Whiteley for the Commission.

Frazier & Frazier, of Greensboro, N. 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 North Carolina corporation engaged in the purchase, sale and distribution of shirts, underwear, hosiery, neckties and other wearing apparel to purchasers in the various States, and with principal place of business in Greensboro, with misrepresenting business status or advantages, advertising falsely or misleadingly and misbranding or mislabeling as to composition and source or origin of product, 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, in selling and soliciting the sale of said wearing apparel, has—

Represented, designated, labeled, and described same as "From factory to wearer," or "Direct to wearer," or "Direct to wearer only," and represented wearing apparel as sold direct from the factory or manufacturer to wearer, so as to eliminate middlemen's profits, and itself as the manufacturer thereof, facts being said apparel was resold at a profit by respondent, after purchase from the manufacturers, and not direct to wearer, and middlemen's profits were not eliminated;

Represented, designated, labeled, and described certain apparel not composed in whole or in substantial part of silk, product of the

cocoon or silkworm, as "silk," or "new silk," or "nusilk," or "ebro-clo-nusilk products"; and

Represented, designated, labeled, and described its shirts made of domestic cloth, as "English broadcloth shirts."

Such acts and things, as alleged, "have had and have the capacity and tendency to mislead and deceive, and to confuse the purchasing public into the belief that the said wearing apparel so designated and advertised is sold direct from the manufacturer to the consumer or purchaser and/or that the said wearing apparel is sold to the purchasers thereof without any profit save that of the manufacturer, and to confuse the purchasing public into the belief that the said wearing apparel so designated and advertised is composed in whole or substantial part of silk, the product of the cocoon, or silkworm"; to the prejudice of the public and 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, Ebroclo Shirt Co., Inc., 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 and filed its answer to said complaint, hearings were had before a trial examiner theretofore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter this proceeding came on regularly for final hearing before the Federal Trade Commission, and the Commission having considered the record, and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Ebroclo Shirt Co., Inc., is now and has been for several years last past a corporation organized under and by virtue of the laws of the State of North Carolina, with its principal office and place of business located in the city of Greensboro in said State.

PAR. 2. Respondent is, and has been, engaged for more than two years last past in the purchase, sale and distribution of shirts, underwear, hosiery, neckties, and other wearing apparel in commerce between and among various States of the United States, and has caused said articles of wearing apparel when purchased by it to be shipped

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from the several places of manufacture in States other than the State of North Carolina to respondent's place of business in Greensboro, N. C., and when said articles are sold by respondent, it has caused and causes the said articles to be forwarded by mail from Greensboro, N. C., to the purchasers thereof located in various States of the United States other than the State of North Carolina.

Respondent sells the shirts, underwear, hosiery, neckties, and other articles of wearing apparel through salesmen or representatives who solicit and take orders from house to house and who forward said orders to the respondent in Greensboro, N. C., whereupon respondent forwards the articles through the mail from its place of business in Greensboro to the various places where the purchasers thereof are located.

The respondent does not sell to stores or retailers, and is in direct competition with other corporations, firms, partnerships, and individuals who use methods of purchase, sale and distribution similar to those used by the respondent. Among said competitors are the Carlton Mills, New York, N. Y.; The Quaker Shirt Co., New York, N. Y.; the Rose Cliff Manufacturing Co., New York, N. Y.; the Stetson Shirt Co. and the Browhard-Ranier Shirt Co., both of Cincinnati, Ohio; the New Process Corp., of Warren, Pa., and the Bostonian Manufacturing Co. of Boston Mass. All of the said competitors are sellers and distributors of shirts, and with the possible exception of the New Process Corp., none of them manufacture the shirts which they sell and distribute.

Respondent has installed in a building in Greensboro, N. C., three sewing machines run by power, upon which three seamstresses are engaged in making certain specially made shirts. With the exception of said specially made shirts, which amount to less than 5 per cent of respondent's shirt business, the shirts purchased and sold by it as aforesaid are manufactured principally in Baltimore, Md., and shipped to the respondent in Greensboro, N. C., on a consignment basis.

Of its annual business of approximately \$250,000, the greater part is from the sale of said shirts. Respondent also handles a line of neckwear and hosiery, which it obtains from the NuSilk Co., a trade name for a business owned by the president of the respondent company.

PAR. 3. The respondent has a large number of salesmen or representatives throughout the United States who solicit business for it on a commission basis, and to these agents the respondent sends literature describing the products which it sells. During the years

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1926 and 1927, among other literature respondent distributed to its representatives a folder or booklet entitled "Home of Ebroclo Shirts," and on the cover of this folder appears a representation of a large six-story building, and on the inside pages appear cuts showing various stages through which the shirts pass in the making, and under these cuts the following statements are made:

Ebroclo Cutting Department

Cutting Ebroclo Collars and Cuffs; Steel Die Process, Insuring Absolute Uniformity

Portion of Ebroclo Sewing Department

Portion of Ebroclo Laundering and Starching Room, etc.

Portion of Ebroclo Pressing Department

In the body of the said folder respondent made the following representations:

Backed by the Ebroclo company delivering shirts of the very best quality, style, and workmanship *direct from factory to wearer*. The shortest way. You can save your customers money and give them value for every cent.

There are many irresponsible concerns imitating our methods. They are jobbers and not manufacturers.

We are one of the largest manufacturers of shirts in this country, selling *direct from Factory to Wearer*.

The building depicted on the outside of the said folder as the Ebroclo Shirt Co., Greensboro, N. C., was the plant of the Marlboro Shirt Co., located in Baltimore, Md., and the various pictures within the folder showing the cutting, sewing, laundering, and packing operations as stated above were pictures taken of the various operations of said Marlboro Shirt Co.

Some two thousand similar folders were printed by respondent and all of them distributed to respondent's sale representatives for their use in building their sales talks, except several hundred, which had not been distributed at the time the respondent discontinued using them during the latter part of 1927, and which were destroyed at that time.

At the same time that respondent distributed the aforesaid folders it also provided its representatives with order blanks to be used by them, in which the phrase "From factory to you" appears, and in form letters sent to its representatives, respondent made use of the expression "Direct from the manufacturer."

On letterheads used by the respondent's district agent or representative at Miami, Fla., during the years 1929 and 1930, which letterheads came directly to the notice of respondent, appear in large type the words "Factory to wearer."

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On the outside cover of a sample book furnished by respondent to its representatives during 1925 and 1926, but which has not been used since 1926, and which was shown to prospective customers by respondent's sales representatives, appear in large type the words "FACTORY TO WEARER."

On credit and debit slips and on shipping orders which were used by respondent up to August, 1930, appear the words "DIRECT TO WEARER."

The respondent sends the literature which contains the above descriptive language for the purpose and with the intent of furnishing to its representatives, points which they desire their agents to pick up and use in their sales talks to the consuming public.

PAR. 4. In the Greensboro Daily Record Standard Classified Business Directory for 1929, at pages 6 and 46 respectively, the respondent is listed as a manufacturer, the reference on page 6 being under a numerical business telephone directory index, and the one on page 46 being as follows:

SHIRTS

Ebroclo Shirt Mfg. Co., Inc., Mfrs.

Shirts, Underwear and Pajamas

1001-1005 South Elm Street, Tel. 1374

Similar listings are found in the Greensboro Daily Record Standard Classified Business Directory for 1930 at pages 3 and 39. In the March 4, 1930, issue of the Greensboro Daily Record, which paper is sent to those subscribers living outside the State of North Carolina, on page 13 appears a listing or advertisement of the respondent in language similar to that appearing in the Classified Business Directory, *supra*.

The black or bold-faced type in which the advertisements or listings of the Ebroclo Shirt Co., Inc., appeared in the above publications indicated that they were paid advertising, and an examination of the listing of another shirt company, immediately following that of the respondent, in which the name of said other company appears in small and light-faced type, indicates that it was not paid advertising.

PAR. 5. Among the shirts sold and distributed by the respondent during the years 1926 and 1927 were shirts made from a material which in the United States, is to the trade and to the consuming public known as broadcloth, and this word when applied to a material for shirting signifies a highly mercerized cotton fabric. These shirts were described by respondent, during the period stated, to its agents as follows:

WHY WE CONCENTRATE ON ENGLISH BROADCLOTH

Through several years of experiments and tests of various materials, we have found that English broadcloth renders to the wearer the greatest value, dollar for dollar, of any material. English broadcloth stands defiant in the field of quality merchandise that is in great demand, and is correct for any and all occasions. English broadcloth is in greater demand than any other shirting material known. The name EBROCLO (registered by us in U. S. Patent Office) is derived from and stands for the product: E for English, BRO for broad and CLO for cloth.

Our entire product is sold by Ebroclo representatives direct from *factory to wearer*, thereby eliminating all intermediate profits between maker and wearer. We sell nothing but *genuine English broadcloth shirts*.

The material of which the above described shirts were made was not English broadcloth, nor was it cloth made in England.

On letterheads used by the district representative or manager of the respondent, located at Miami, Fla., which letterheads were used with the knowledge of the respondent from June, 1929, to March, 1930, the following language appears:

EBROCLO SHIRT COMPANY, INCORPORATED

Greensboro, N. C.

English Broadcloth Shirts, Underwear and Pajamas

The New Silk Ties and Men's Silk Hose

FACTORY TO WEARER

Swift & Blackwell, District Managers

213 Congress Building

Miami, Florida-----192--

PAR. 6. In a publication prepared and distributed by respondent, sometimes monthly, sometimes quarterly, under the name and title "Strate Stuff," on page 2 of an issue circulated early in 1930, appears a cut representing a building of the factory type, and under said cut the following:

HOME PLANT—GREENSBORO, N. C.

Here is a picture of the home plant—a picture of the business in which you are a partner. This is the Ebroclo-Nu-Silk plant exclusively—every foot of floor space devoted to taking care of *your business*. Every item we sell is sold *direct to the wearer* only.

H. C. Chandgie, the president of the Ebroclo Shirt Co., Inc., is also the owner of a business which he operates under the name and style of NuSilk Co. This is not a corporation, but is a trade name under which neckwear and men's and ladies' hosiery is handled. The so-

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called NuSilk Co. does not manufacture any of the goods which are sold under that trade name, but buys its goods from manufacturers and through an arrangement with the respondent as its selling agency, has its neckwear and hosiery handled through the sales representatives of the Ebroclo Shirt Co.

To the sales representatives employed by respondent, the respondent sends out literature in which Ebroclo and NuSilk are linked together and furnishes its salesmen with sample books containing samples of the so-called NuSilk ties and hosiery. This sample book is shown by the salesmen to prospective customers, and on the outside of said sample book, in large letters, appears the following:

NUSILK
TIES—HOSE,
Greensboro, N. C.

On the inside of the said sample book, the words "NuSilk Ties," "NuSilk socks for men," and "NuSilk full fashioned fine ladies hosiery" appear.

In a sample book currently used by respondent, immediately after the pages containing samples of the so-called NuSilk ties, appears the following statement:

NuSilk socks for men. NuSilk wears well because it is new silk.

In a letter of instruction given by respondent to its salesmen, the following language is used:

NuSilk four-in-hand ties are made from the very finest grades of silk attainable.

Six of the said men's so-called silk ties were tested and analyzed by the Bureau of Standards of the United States Department of Commerce, which bureau reported that one of the said ties was wholly rayon, and that the other five contained from 46.51 per cent to 69.55 per cent each of rayon, the remainder being silk. Some of the socks sold by respondent under the brand name "NuSilk" are silk and others are part silk only. An inconsiderable percentage of the ties sold by respondent as silk ties are all silk, some of them being 100 per cent rayon or cellulose acetate rayon, some of them being silk in one direction and rayon in the other, some of them being silk in one direction and rayon and cotton in the other, and some being rayon in one direction and cotton in the other. Of forty-four samples tested by the Bureau of Standards of the Department of Commerce, in addition to the six ties above mentioned, one sample only was found to be all silk.

PAR. 7. Respondent is not a manufacturer and does not manufacture the shirts or other wearing apparel sold and distributed by it as aforesaid, nor are the said shirts and other wearing apparel sold direct from the factory to the wearer, or direct to the wearer, except for an inconsiderable number of so-called specially made shirts; the shirts sold and distributed by respondent are not English broadcloth shirts, and the men's neckwear or ties and hosiery sold or distributed by respondent as aforesaid under the trade name or brand "NuSilk" and represented or advertised by respondent to be silk or new silk or NuSilk are not composed wholly of silk, the product of the silkworm or cocoon, and the above false and deceptive representations have the capacity and tendency to mislead and deceive the ultimate purchasers of said products into the belief that said representations are true, and tend to and do divert trade from competitors who truthfully advertise and brand their products.

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 respondent's competitors, and are unfair methods of competition in commerce and constitute a violation 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 respondent, the testimony and briefs in support of the complaint and in opposition thereto, 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 ordered, That the respondent, Ebroclo Shirt Co., Inc., its officers, representatives, agents, servants, and employees, cease and desist in connection with the sale and distribution of shirts, underwear, hosiery, neckties, and other wearing apparel in interstate commerce—

(1) From the use, or authorizing the use by others, of the words "manufacturer" and "manufacturers," or any abbreviation thereof,

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and the phrases "Factory to wearer," "From factory to you," "Direct from the manufacturer," "Direct to wearer," or any phrase, slogan, or pictorial representation of similar import; or any statement or representation whatsoever that respondent is the manufacturer of the shirts, underwear, hosiery, neckties, and other wearing apparel sold and distributed by it; or any statement or representation or pictorial representation importing or implying that respondent is selling and distributing its commodities direct from the manufacturer or factory to its customer purchasers without the intervention of middlemen.

(2) From directly or indirectly representing, describing, advertising, branding, or labeling with the word "NuSilk," or the words "new silk," or any word or words of similar import, any cloth or fabric or articles of wearing apparel made therefrom which are not composed wholly of silk, a product of the cocoon of the silkworm.

(3) From the use, or authorizing the use by others, of the words "English broadcloth" to represent, describe, advertise, brand, or label shirts unless such garments be made from broadcloth made in England.

And it is further ordered, That the respondent, Ebroclo Shirt Co., Inc., within 30 days after the date of service upon it of this order, shall 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.

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IN THE MATTER OF

MADISON MILLS, INCORPORATED

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

Docket 1776. Complaint, Dec. 9, 1930.¹—Decision, Dec. 14, 1931

Where a corporation engaged in sale of men's shirts, pajamas, and underwear, through use of sample lines which exaggerated extent and variety of its stock, and through use of house to house canvassers, who collected and retained 25 per cent of purchase price as their commission, and forwarded orders for filling, and transmission direct to customers,

- (a) Made it a practice and followed a policy of shipping shirts differing in design, pattern, and style from those ordered, C. O. D., without privilege of inspection, and without first giving customer notice of exhaustion of stock of particular garment ordered and opportunity for further selection; with result that it collected from customers for shirts neither ordered, nor intended to be paid for, and many were disappointed and dissatisfied through not receiving shirts which it had been represented they were to receive;
- (b) Represented that dissatisfied customer's money would be returned "at once, without question," facts being that on frequent occasions refunds were not made except after months of "wrangling" or other annoying and unsatisfactory experiences to those interested in obtaining such refunds; and
- (c) Made use of such words as "Mills," "shirt manufacturers," "better Madison made shirts," "factory to wearer," "compare this factory to wearer price with that asked by retail stores for the same quality shirts," facts being that it had no mill for manufacturing, did not manufacture shirts advertised and sold by it, nor sell such shirts direct to consumers at a price including only one profit, but caused same to be made for it under contract with another and separate company, under a different name and at a different location, and at an expense which it passed on to the consumer;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of such product, and injure competitors to a substantial extent through unfairly diverting trade from them to it:

Held, That such acts and practices, under the conditions and 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. Maximilian Bader, 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

¹ Amended and supplemental complaint.