

Complaint

IN THE MATTER OF

JOSEPH ROSENBLUM, AN INDIVIDUAL, TRADING AS
PRINCESS SILK MILLS

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

Docket 1991. Complaint, Jan. 8, 1932—Decision, June 25, 1932

Where an individual engaged in sale of dress goods and garments through numerous house to house solicitors, and doing an annual business of several hundred thousand dollars annually,

- (a) Employed trade terms including words "silk", "satin", "chiffon", "pongee", and "shantung" on his swatch cards, and in his advertising matter and through solicitors in bringing to attention of consumers, customers, and prospective customers dress goods and garments of cotton or rayon, or mixtures thereof, without further terminology or description as to composition thereof, notwithstanding fact aforesaid products and weaves variously designated as "sport silk", "crepe rayon silk", "rayon silk shantung", "rajah shantung", "pongee", "superfine pongee", "silhouette chiffon", etc., were not that long highly esteemed material composed of the product of the cocoon of the silkworm, long implied to trade and public by said terms; with effect of causing customers to purchase said fabrics and merchandise as and for genuine silk, and with capacity and tendency so to do;
- (b) Employed such terms as "linene shantung", "linene prints" and "linene suiting" in swatches, etc., in offering, advertising, and selling its aforesaid products, as above set forth, notwithstanding fact products were not linen as long understood by public, i. e., fabrics woven from flax or garments made thereof; with capacity and tendency to mislead purchasing public as to composition of aforesaid fabrics and garments, and with result of bringing about their purchase as and for genuine linen; and
- (c) Included words "Silk Mills" in its trade name, notwithstanding fact it neither fabricated nor manufactured merchandise dealt in by it; with capacity and tendency to mislead consuming public into believing said individual to be engaged in manufacture of said merchandise and with result of bringing about purchase thereof in such mistaken belief;

With capacity and tendency to mislead and deceive public and purchasers and prospective purchasers of said individual's products, and induce purchase thereof by them in reliance upon erroneous beliefs thus induced and thereby divert trade to said individual from competitors dealing through house to house solicitation or mail order, or engaged in intrastate commerce:

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

Mr. Eugene W. Burr for the Commission.

Mr. Samuel M. Birnbaum, 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

Complaint

16 F. T. C.

charged respondent individual, engaged in the purchase of merchandise consisting chiefly of dress goods and garments and in the sale thereof through house to house solicitation, and with principal place of business in New York City, with misrepresenting composition of product dealt in, using misleading trade name and advertising falsely or misleadingly, 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, applies designations including the words "silk", "satin", "chiffon", "pongee", and "shantung",¹ to dress goods and garments, about 99 per cent of the fiber content of which consists of cotton and rayon and mixtures thereof, in swatch cards, advertisements, advertising matter and through oral representations of his solicitors, and similarly applies terms including word "linene" to dress goods and garments made from rayon and cotton; with capacity and tendency to mislead and deceive purchasing public into believing that merchandise thus designated and described is composed of genuine silk material, i. e., product of the cocoon of the silk worm,² or is made from fiber composed of flax,³ and with effect of so deceiving the public in numerous instances.

Respondent further, as charged, employs trade name including words "silk mills" on his swatch cards, in his advertisements and advertising matter and through his solicitors, and also on stationery, order blanks, and in other ways, notwithstanding fact he does not fabricate or manufacture any of the merchandise dealt in by him as aforesaid; with capacity and tendency to mislead and deceive public into believing that in buying from him they are dealing directly with a concern manufacturing merchandise purchased, and with effect of so misleading and deceiving.

Said methods of competition, as alleged, "have the capacity and tendency to attract trade to respondent and to divert the same from respondent's competitors, and have actually resulted in attracting trade to respondent and in diverting the same from his competitors,"

¹ The different designations are set forth, *infra*, in the findings at page 242.

² As alleged in the complaint, "the word 'Silk' for several hundred years past has had, and still has, in the minds of the consuming public, a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk fabrics for centuries have held, and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a variety of distinctive terms have been given to the fabrics resulting from different types of weaving. Among the terms which for a long period have been, and at the present time still are, given to and associated in the public mind as varieties of fabrics made from the cocoon of the silkworm are 'satin,' 'chiffon,' 'pongee,' and 'shantung.'"

³ As alleged in the complaint, "the term 'Linen' has for centuries been applied to fabrics woven from flax, and has long been and still is understood by the public, when applied to fabrics or finished garments, to mean that the merchandise so designated is composed of materials woven from flax."

who include concerns engaged in selling through house to house solicitation, mail order concerns, and concerns engaged in intra-state commerce; to the prejudice and injury of the public and said 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, Joseph Rosenblum, an individual, doing business under the trade name and style of Princess Silk Mills, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent having entered his appearance and filed his answer herein and having entered into a stipulation as to the facts in which it was agreed that the said facts might be taken in lieu of testimony, thereupon this proceeding came on for final hearing 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, prior to the issuance of complaint herein, was engaged, under the trade name and style of Princess Silk Mills, in buying and selling merchandise, chiefly dress goods and garments, with his principal place of business in New York City. His trade in gross sales, in normal years, has been approximately \$300,000 annually. Respondent has sold and still sells his merchandise through house to house solicitation, and in the conduct of his said business employs about 3,000 women solicitors, most of whom devote to the sale of respondent's merchandise, their spare time only. When sales are made by respondent's said solicitors, the merchandise purchased by respondent is transported, or by respondent caused to be transported, in some instances to the consumer, respondent's customer, C. O. D. In other and the majority of instances, said merchandise is by respondent transported or caused to be transported to respondent's solicitors. The transportation of respondent's said merchandise is from his place of business in the State of New York, through and into other States in various parts of the country, and constitutes interstate commerce.

PAR. 2. The word "silk", for several hundred years past has had, and still has, in the minds of the consuming public, a definite and

Findings

16 F. T. C.

specific meaning, to wit, the product of the cocoon of the silkworm. Silk fabrics for centuries have held and still hold, great public esteem and confidence for their preeminent qualities. Silk thread has long been woven into a variety of fabrics differing as to weave and texture, and a variety of distinctive terms were and are still given to the fabrics resulting from different types of weave. Among other terms which were given to various weaves of silk were "satin", "chiffon", "pongee", and "shantung". These terms became associated with silk material as manufactured in the said various weaves in the mind and usage of the trade and of the public. Subsequently materials other than the product of the cocoon of the silkworm and resembling silk in appearance and in the uses to which they were devoted, came to be manufactured and marketed in competition with silk. These said other materials thus sold, were manufactured and are still manufactured in weaves the same as or similar to those in which silk had been and still is woven, including the weaves of satin, chiffon, pongee, and shantung. These said materials, other than silk thus woven are now being sold to the public under the terms said last named by some traders with an accompanying terminology and/or description showing that the material was and is made from a substance or substances other than silk. Other traders, including respondent, competing with said first described traders, have been and still are selling materials resembling silk as aforesaid under the said trade terms of satin, chiffon, pongee, and shantung, but without the said described terminology or description which, if used, would show that the material was and is of a substance or substances other than silk.

PAR. 3. Among the trade terms which have been used by respondent for merchandise made from cotton, rayon or mixtures of cotton and rayon, have been the following:

"Sport Silk", "New Bettina Satin—A New Silk", "Adorable Crepe Rayon Silk", "Adorable Flat Crepe Rayon Silk", "Rayon Silk", "Beautisilk", "Rayon Silk Pique", "Rayon Silk Shantung", "Rayon Silk Plaids", "Rayon Silk Prints", "Fifth Avenue Crepe Rayon Silk", "Sunrise Shantung", "Rajah Shantung", "Japanese Shantung", or "Jap Silk", "Shantung Hankylin", "Printed Shantung", "Primrose Shantung", "Shantung Crepe", "Pongee", "Superfine Pongee", "Cameo Pongee", "Silhouette Chiffon", "Marvlo Dotty Chiffon", and "Vanity Chiffon".

The foregoing terms, prior to the issuance of complaint herein, were used by respondent on his swatch cards, advertising matter, in all representations by solicitors, and in these and other ways were brought to the attention of the consumers, customers, and prospective customers of respondent, referring to the dress goods and garments sold by respondent as hereinbefore set forth. Many of the

foregoing terms, however, about the time of the issuance of the complaint herein, were by respondent discontinued.

PAR. 4. The use (1) of the term "silk" and/or a combination of this term with other words, for nonsilk fabrics and merchandise, and of (2) the terms "satin", "chiffon", "pongee", and "shantung" and/or a combination of these terms with each other and/or with other words, not accompanied by corrective terminology and/or description as in paragraph 2 hereinabove described for nonsilk fabrics and merchandise, are used competitively by respondent and have the tendency and capacity to cause customers, through the popular meaning of these terms as described in paragraph 2, to buy, and has in some instances resulted in the purchase from respondent of merchandise so named by customers in the belief that the fabrics and merchandise by them so purchased were the products of the cocoon of the silkworm.

PAR. 5. The term "linen" has for centuries been applied to fabrics woven from flax, and has long been and still is understood by the public, when applied to fabrics or finished garments, to mean that the merchandise so designated is composed of materials woven from flax. Respondent, in the conduct of his business as hereinabove described, uses terms for dress goods and garments not made from fiber composed of flax, but from rayon and cotton, including other terms, "linene shantung", "linene prints", and "linene suiting". Said terms are brought to the notice of the public by respondent in the manner described in paragraph 3.

PAR. 6. The terms in the last preceding paragraph described, are used by respondent competitively and have a capacity and tendency to cause the purchasing public to believe that respondent's said merchandise so designated is true linen made from flax, and have at times resulted in the buying of said goods as and for true linen.

PAR. 7. Respondent is engaged in the purchase of all merchandise sold by him as above described, and does not fabricate or manufacture any merchandise so sold. Prior to the issuance of the complaint herein, respondent was using in competition in his trade, as above described, the said name and style of "Princess Silk Mills." About the time of the issuance of said complaint, however, respondent discontinued, in the main, the said trade name and style, and began the substitution therefor of the trade name and style of "Princess Fifth Avenue Fabrics", and is using the latter trade name and style except as respects his present stocks, orders blanks, and envelopes, of which he has a limited supply, which is being consumed as rapidly as the demands of business permit. The use of respondent's said former trade name and style had the capacity and tend-

ency to cause, and in some instances did cause the consuming public to purchase said merchandise in the belief that respondent was engaged in manufacturing the merchandise sold by him.

PAR. 8. Respondent, in the course and conduct of his business hereinabove described, is in competition with numerous persons, partnerships, and corporations engaged in the sale of dress goods, garments, and other merchandise, and in transporting or causing to be transported their merchandise from one State into and through other States in the course and conduct of trade and commerce among the States. Respondent's said described competitors include, among others, concerns engaged in selling through house-to-house solicitation and mail order concerns. Respondent also is engaged in competition with concerns engaged in intrastate commerce.

PAR. 9. The statements and representations hereinbefore set forth are false and misleading as indicated and the use of the said statements and representations by respondent, Joseph Rosenblum, in the manner and form made has the capacity and tendency to mislead and deceive the public and purchasers and prospective purchasers of respondent's products into the erroneous belief that the said statements and representations are true and to induce persons to purchase respondent's products in reliance upon and by reason of their belief in the truth and accuracy of said statements and representations, and thereby to divert trade to respondent from competitors.

CONCLUSION

The acts and practices of respondent under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, and the stipulation of facts entered into by and between the respondent and the chief counsel of the Commission, the Commission having approved said stipulation and having made its findings as to the facts and conclusion that 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, Joseph Rosenblum, his agents, representatives, and employees, do cease and desist, by oral representations or in advertisements, on swatch cards, in letters, printed circulars and other advertising literature circulated and distributed in connection with the offering for sale or sale in interstate commerce of merchandise, dress goods, and garments:

(1) From using the word "silk" either alone or with any other word or words to describe or refer to merchandise, dress goods, or garments not composed entirely of silk, the product of the cocoon of the silkworm;

(2) From using the words "satin," "chiffon," "pongee," or "shantung" either alone or in combination with any other word or words to describe or refer to merchandise, dress goods, or garments not made wholly from silk, the product of the cocoon of the silkworm, and from the use of the word "linene" either alone or in combination with any other word or words to describe merchandise, dress goods, or garments not made wholly of the fiber of flax, without using in conspicuous lettering at least half as large as the size of said terms "satin," "chiffon," "pongee," "shantung," or "linene," and in immediately following conjunction and context therewith, words clearly showing of what material the said merchandise, dress goods, or garments is composed as the instances may actually and respectively be; and

(3) From using as a trade name the name and style "Princess Silk Mills" or any other word or words containing the word "Mills," unless and until the respondent, Joseph Rosenblum, actually owns or controls a mill or factory in which the merchandise so offered for sale and sold by him is manufactured.

It is further ordered, That respondent shall, within 60 days after service upon him of a copy 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 and conformed to the order to cease and desist hereinabove set forth.

IN THE MATTER OF
**HARRY GREENBERG AND LEE JOSEFSBERG, TRADING
AS GREENBERG & JOSEFSBERG**

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

Docket 2030. Complaint, Apr. 28, 1932—Decision, June 27, 1932

Where a firm engaged in importation and sale of wooden rulers, offered and sold as "Boxwood" or "Warranted Boxwood" rulers not made of wood of West Indian or Venezuelan boxwood tree, and so branded same; with capacity and tendency to mislead and deceive trade and purchasing public in respect of the composition or nature of said products, and induce their purchase as and for rulers of genuine boxwood, long offered and sold under said trade name and widely esteemed for their utility and excellence, and with result of furnishing dealers with the means of misleading and deceiving said trade and public in aforesaid respects, and of diverting trade to said firm from competitors dealing in genuine boxwood rulers, and those dealing in rulers made of other woods truthfully branded and described, and with capacity and tendency so to do:

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. Alfred M. Craven 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 Harry Greenberg and Lee Josefsberg, engaged as Greenberg & Josefsberg in importation of merchandise including wooden rulers, and in sale thereof among the various States, and with principal place of business in New York City, with 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 respondents sell wooden rulers not made of the wood of the boxwood tree, falsely branded as "Boxwood" or "Warranted Boxwood," at prices substantially lower than those prevailing for genuine "Boxwood" rulers; with result of furnishing dealers with the "means to mislead and deceive the purchasing public, including the trade," into believing products in question to be rulers made of West Indian boxwood tree, and with capacity and tendency to mislead and deceive and induce purchase of said rulers in reliance on such erroneous belief, and to divert trade to them from competitors dealing in genuine boxwood rulers, and competitors