

Complaint

IN THE MATTER OF
MADISON MILLS, INCORPORATEDCOMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1999. Complaint, Jan. 23, 1932—Decision, Jan. 24, 1933*

Where a corporation engaged in sale of cotton, and cotton and rayon, men's shirts to consuming public through house-to-house solicitors, set forth upon sample swatch cards for customers' selection, the words "Satin Ribbed Radioux Shirts", "Satin Striped Broadcloth Shirts", and "Normandy Flannel Shirts", notwithstanding fact that the garments supplied in response to selections thus invited, were not composed of fabrics striped or ribbed with silk woven in the satin weave, or made entirely of wool with nap surface, as understood by trade and public from the words employed; with tendency and capacity to mislead and deceive public and induce purchase of said shirts as and for garments composed of silk or wool, as above set forth, and divert trade to it to the injury of competitors engaged in the sale of accurately labeled and advertised shirts made of cotton, silk, or wool, as the case might be:

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

Mr. Henry C. Lank 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, a New York corporation engaged in the sale of men's shirts and other garments to the purchasing and consuming public throughout the United States, through numerous salesmen, agents, and house-to-house canvassers, through sales promotional literature such as letters, leaflets, sample cards, etc., and through advertisements in newspapers and similar publications of general circulation, and with principal office and place of business in New York City, with misrepresenting product as to composition or source or origin, and advertising falsely or misleadingly in said respects, 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 aforesaid for more than two years last past has advertised, offered, and sold shirts dealt in by it, and made in the United States of cotton and rayon also there made, under the designations "Satin Striped Broadcloth Shirts"; "Satin Ribbed Radioux Shirts"; Navarre Flannel Shirts"; and "English Broadcloth Shirts", respectively, notwithstanding the fact

that the shirts referred to by the first two aforesaid designations contained no satin or silk, the so-called "Navarre Flannel Shirts" contained no wool, and the "English Broadcloth Shirts" contained no English broadcloth or fabric made in or imported from England.¹

Respondent's aforesaid "advertising, describing, representing, offering for sale and selling the said respective shirts as Satin Striped Broadcloth Shirts, Satin Ribbed Radioux Shirts, Navarre Flannel Shirts, and English Broadcloth Shirts, * * * are false, misleading, and deceptive, are and have been calculated, and have and had the capacity and tendency, to mislead and deceive large or substantial numbers of the purchasing and consuming public into purchasing said garments in the erroneous beliefs that (a) said so-called Satin Striped Broadcloth Shirts and Satin Ribbed Radioux Shirts contain silk and satin; (b) that said so-called Navarre Flannel Shirts are made of flannel and contain wool; and (c) that said so-called English Broadcloth Shirts are made of broadcloth manufactured in or imported from England."

Respondent further, as charged, in advertising, representing, describing, offering and selling its said merchandise to the purchasing and consuming public, has caused and still causes, divers and sundry other false statements, representations, and assertions to be made of and concerning its shirts and the fabric from which they are composed, to the effect that certain of said shirts contain silk or satin, or wool and flannel, or are made of fabrics or cloth made in or imported from England, as the case may be; with the effect of misleading and deceiving members of the purchasing and consuming public into buying said garments in an erroneous belief in the truth of such representations, statements and assertions.

Use by respondent, as charged, of such "false, misleading, and deceptive representations, statements, and assertions as hereinabove set forth constitutes practices or methods of competition which tend to and do (a) prejudice and injure the public, (b) unfairly divert trade from and otherwise prejudice and injure respondent's competitors", many of whom sell and distribute shirts and other garments without misrepresenting the same and the fabrics and cloth of which they are composed, "and (c) operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in the business of the marketing of shirts", and "said false, misleading and deceptive acts, practices and methods of respondent, under the circumstances and conditions hereinabove alleged, are unlawful

¹ As alleged in the complaint, "the said word 'satin' and the word 'flannel' as used by respondent in the designation, description, and representation of its shirts as hereinabove set forth, are, to the purchasing and consuming public, indicative of a silk or wool content of the fabric or cloth and mean, respectively, silk and wool."

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, Madison Mills, Inc., a corporation, charging said respondent with the use of unfair methods of competition in interstate commerce in violation of the provisions of the said act.

Respondent filed its answer to the said complaint and hearings were had before an examiner of the Commission theretofore duly appointed and testimony was heard and evidence received in support of the charges stated in the complaint. The respondent offered no testimony or evidence in opposition to the said complaint.

Thereupon this proceeding came on for final hearing on the brief of the Commission and oral argument of counsel for the Commission, respondent having been duly notified and not having filed any brief and not having appeared to present oral argument. The Commission, having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Madison Mills, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the city of New York, in said State. It is now and for several years last past has been engaged in the business of selling men’s shirts and other articles of wearing apparel to the consuming public located throughout the different States of the United States. In the course of its said business respondent was and still is in competition with other corporations, partnerships, and individuals engaged in selling in interstate commerce to consumers and to the trade men’s shirts and similar articles of wearing apparel.

PAR. 2. The respondent employs representatives located throughout the different States of the United States, who go from house to house soliciting and accepting orders for its said shirts and other articles of wearing apparel. In response to orders taken by its

representatives, respondent ships its said products from its place of business in the city of New York to the purchasers thereof located throughout the different States of the United States or to its representatives, who deliver said products to the purchasers thereof.

PAR. 3. In the course of its aforesaid business the respondent issued to its representatives for use in soliciting orders of its said products sample outfits including swatch cards to which are attached samples of materials out of which respondent's shirts are made. These swatch cards are shown and displayed by respondent's representatives to prospective buyers of shirts who examine said sample materials and make such selections as they desire.

PAR. 4. The respondent caused to be printed and represented on said swatch cards to which samples of material are attached the words "Satin Ribbed Radioux Shirts", "Satin Striped Broadcloth Shirts", and "Normandy Flannel Shirts". The content of the said sample material represented as "Satin Ribbed Radioux Shirts" and "Satin Striped Broadcloth Shirts" was cotton with a rayon stripe or rib. The content of the sample materials represented as "Normandy Flannel Shirts" was all cotton.

PAR. 5. The trade and the consuming public understand the word "Satin", when unqualified without reference to content, to indicate an all silk fabric woven in the satin weave, i.e., made of a thick close texture and overshot woof having a glossy surface. The terms "Satin Ribbed Radioux Shirts" and "Satin Striped Broadcloth Shirts" are understood by the trade and the consuming public to indicate shirts containing a stripe or rib of silk woven in the satin weave. The trade and the consuming public understand the word "Flannel" and the words "Normandy Flannel" to indicate a woolen fabric with a nap surface.

PAR. 6. The representations "Satin Ribbed Radioux Shirts" and "Satin Striped Broadcloth Shirts" on said cards to which was attached shirt materials composed of cotton with a rayon stripe had the tendency and capacity to deceive the public into purchasing respondent's shirts under the belief that such shirts were made out of fabrics containing a stripe or rib of satin content. The representation "Normandy Flannel Shirts" on said cards to which was attached shirt materials composed of cotton had the tendency and capacity to mislead and deceive the public into purchasing respondent's shirts under the belief that such shirts were made of flannel. The term "Normandy Flannel" used by the respondent, in connection with the sale of cotton shirts, a combination of the name of a wool fabric and the name of a section in France noted for producing such fabric, is strongly misleading and deceptive.

PAR. 7. Respondent's aforesaid shirts have been sold by it under the above-mentioned representations in competition with shirts made of cotton and sold under labels indicating that fact; in competition with shirts made of silk under labels indicating that fact, and in competition with shirts made of wool and sold under labels indicating that fact. The use by the respondent of the terms "Satin Ribbed Radioux Shirts", "Satin Striped Broadcloth Shirts" and "Normandy Flannel" to designate and describe shirts made of cotton or cotton with a rayon stripe or rib had the tendency and capacity to mislead and deceive the public and to divert trade to the respondent to the injury of respondent's said competitors engaged in selling shirts accurately labeled and advertised.

CONCLUSION

The practices and methods of competition of 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 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 respondent and the testimony and evidence taken, and the brief and oral argument of counsel for the Commission, and the Commission having made its findings as to the facts and 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, Madison Mills, Inc., its officers, agents, representatives, and employees do cease and desist from—

(1) Employing or using directly or indirectly on swatch cards, labels, or in advertising, or otherwise, in connection with the sale in interstate commerce of shirts or other wearing apparel composed of cotton with rayon stripes or ribs, the words "Satin Ribbed Radioux Shirts" or "Satin Striped Broadcloth Shirts", unless there be added in letters equally conspicuous and on the same side of the swatch card, label or advertising matter on which said words appear, the words "Rayon

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Satin Ribbed Radioux Shirts", "Rayon Striped Broadcloth Shirts" or equivalent modifying terms.

(2) Employing or using directly or indirectly on swatch cards, labels, or in advertising, or otherwise, in connection with the sale in interstate commerce of shirts or other wearing apparel composed of cotton, the words "Normandy Flannel" or the word "Flannel."

It is further ordered, That the said respondent within 60 days after 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 is complying and has complied with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
JOSEPH TOBIAS, AN INDIVIDUAL TRADING AS
NATIONAL IMPORTING CO.

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

Docket 2005. Complaint, Feb. 4, 1932—Decision, Jan. 25, 1933

Where an individual engaged in sale of dress goods, wash fabrics, draperies, and other similar products to the consuming public through agents or canvassers,

- (a) Displayed and featured trade name containing the words "Importing Company" on swatch cards, circulars, letterheads and envelopes supplied for agents' use in selling said products, notwithstanding fact dress goods, wash fabrics, and draperies offered and sold by him were of domestic origin, and linens and handkerchiefs purchased from importers represented less than 10 percent of merchandise dealt in by him; and
- (b) Used such designations on swatch cards as "Silk Finish", "Sylkiana", "Foulard", "Shantung", "Silksheen", "Superay Taffeta", "Shantora Crepe" or "Shanteen Crepe", notwithstanding fact fabrics referred to contained no silk, product of the cocoon of the silkworm;

With capacity and tendency to mislead purchasing public as to composition of said products and trade status of said individual as an importer and induce purchase of his said products in such erroneous beliefs, and divert trade from and otherwise injure (1) competitors in fact importing dress goods, fabrics, wash goods and similar products, preferred to the domestic by a substantial portion of the consuming public, for resale to jobbers, wholesalers and retailers, and (2) competitors manufacturing, wholesaling, and retailing the domestic products under correct labels without describing themselves as importers or importing companies:

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. Robert H. Winn for the Commission.

Mr. Henry Halpern, of Brooklyn, N.Y., 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 individual, engaged as National Importing Co. in the sale direct to the consuming public, through house to house canvassers, of dress goods, wash fabrics, drapings, and other similar products, and with principal office and place of business in New York City, with using misleading trade name as to business status, misbranding or mislabeling as to composition of product, and