

Complaint

IN THE MATTER OF
AQUA SEAL CORPORATION AND DUPLAN SILK
CORPORATION

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

Docket 2194. Complaint, June 9, 1934—Order, Aug. 27, 1934

Consent order requiring respondent corporations, their agents, etc., in connection with the sale, advertisement, and offer in interstate commerce, of velvet fabrics, processed, treated, or finished with "Aqua-Sec" process to cease and desist from stating or representing to the public in advertisements in newspapers, or other publications, or otherwise, that velvet fabrics processed, treated, or finished with the "Aqua-Sec" process are thereafter permanently waterproof and waterspot proof; or that velvet fabrics so treated or articles of clothing made of them have those qualities or characteristics after the ordinary and usual drycleaning to which they may be subjected in ordinary use and wear; and

Ordered further that complaint be dismissed as to charges of use of unfair methods of competition in connection with sale in interstate commerce of silk fabrics processed, treated or finished with the "aqua-sec" process of the respondent Aqua Seal Corporation.

Mr. Edward E. Reardon for the Commission.

COMPLAINT

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, having reason to believe that Aqua Seal Corporation and Duplan Silk Corporation, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Aqua Seal Corporation is a corporation, incorporated in or about November 1932 under the laws of the State of New York and having a place of business in the City of New York at all times since its incorporation.

PAR. 2. Respondent Duplan Silk Corporation is a corporation, incorporated in the year 1917 under the laws of Delaware and having a place of business in the City of New York, N. Y., at all times since its incorporation. It is engaged in the manufacture and in the business of the sale of silk, rayon, velvet, and textile fabrics, with factories for

Complaint

19 F. T. C.

the manufacture thereof in several cities or places in Pennsylvania, during the times above mentioned.

PAR. 3. The respondent, Aqua Seal Corporation is, and has been since on or about the date of its incorporation, the owner, or the licensee with the right to license its use to others, of a process called "Aqua-Sec", by means of which the surface of pile of fabrics of textiles subjected thereto, including silk and velvet, is impregnated with certain materials or chemicals used in the process for the purpose and with the effect of causing the fabrics subjected thereto, including silk and velvet, to repel or to resist, more or less, the application to them, or the penetration or saturation of them, and the effects thereof, such as water spots, by water or other liquids or soiling material.

PAR. 4. The respondent, Aqua Seal Corporation, during the time mentioned and referred to in paragraph 3 hereof, has made the United Piece Dye Works, a corporation organized and existing under the laws of New Jersey, and having a place of business at Lodi, N. J., its exclusive agent for the use of the "Aqua-Sec" process in the processing, treating or finishing of silk fabrics.

PAR. 5. During the time mentioned and referred to in paragraph 3 hereof, the Aqua Seal Corporation has granted the said United Piece Dye Works the right to use the "Aqua-Sec" process, under the license or agreement that the United Piece Dye Works will use the process exclusively in the processing, treating or finishing of silk fabrics only, for customers of the Aqua Seal Corporation, individuals, firms, or corporations designated to it by Aqua Seal Corporation, and on the further agreement, or understanding, that the United Piece Dye Works will purchase from Aqua Seal Corporation the materials and chemicals required in the use of the "Aqua-Sec" process and used therein, and will charge the said customers prices for the processing, treating, or finishing of the silk fabrics subject to the approval of the Aqua Seal Corporation.

PAR. 6. The respondent, Aqua Seal Corporation, during the times mentioned and referred to in paragraph 3 hereof, has made the Rochelle Park Velvet Co., Inc., a corporation organized and existing under the laws of New Jersey, and having a place of business at Rochelle Park, N. J., its exclusive agent for the use of the Aqua-Sec process in the processing, treating or finishing of velvet fabrics.

PAR. 7. During the times mentioned and referred to in paragraph 3 hereof, the Aqua Seal Corporation has granted the Rochelle Park Velvet Co., Inc., the right to use the Aqua-Sec process, under the license, or agreement, that the Rochelle Park Velvet Co., Inc., will use the process exclusively in processing, treating or finishing of velvet fabrics, only for customers of the Aqua Seal Corporation,

individuals, firms, or corporations designated to it by the Aqua Seal Corporation, and on the further agreement or understanding that the Rochelle Park Velvet Co., Inc., will purchase from Aqua Seal Corporation the materials and chemicals required in the use of the Aqua-Sec process and used therein, and will charge the said customers prices for the processing, treating or finishing of the velvet fabrics, subject to the approval of the Aqua Seal Corporation.

PAR. 8. During the times above mentioned and referred to, the United Piece Dye Works and the Rochelle Park Velvet Co., Inc., respectively, as the agents of the Aqua Seal Corporation, have processed, treated, or finished silk and velvet fabrics, using the Aqua-Sec process, only for the customers above referred to of the Aqua Seal Corporation, and they have used, exclusively, in connection with the Aqua-Sec process, in such instances, materials and chemicals sold to them by the Aqua Seal Corporation, and the said materials and chemicals, when so sold, have been caused by the Aqua Seal Corporation to be transported from Illinois to the said purchasers in New Jersey.

During said times, the Aqua Seal Corporation and its agents, United Piece Dye Works and the Rochelle Park Velvet Co., Inc., have respectively caused the fabrics processed, treated, or finished and impregnated, as above set forth, including the velvet fabrics of the respondent, Duplan Silk Corporation, hereinafter mentioned and referred to, to be transported from New Jersey to the said customers of the Aqua Seal Corporation in New York and other States.

PAR. 9. During the times above mentioned, the respondent, Aqua Seal Corporation, gave to the respondent, Duplan Silk Corporation, the exclusive right or license to have the Aqua-Sec process used on certain velvet fabrics manufactured or sold by the respondent Duplan Silk Corporation, and the respondents, during said times, have caused the velvet fabrics of the Duplan Silk Corporation to be processed, treated, or finished by the Aqua-Sec process and to be impregnated with materials or chemicals used therein by the Rochelle Park Velvet Co., Inc., at its place of business in New Jersey.

PAR. 10. During the times above mentioned, the respondent, Duplan Silk Corporation sold its velvet fabrics, processed, treated, or finished by the Rochelle Park Velvet Co., Inc., as aforesaid, with the Aqua-Sec process, under the trade name "L'Eau-Vel", to wholesale dealers and to retail dealers throughout the United States, for resale to the members of the public and to cloth cutters and dressmakers, for the making of clothing for sale by them to the public throughout

Complaint

19 F. T. C.

the United States, and caused said velvet fabrics, when so sold by it, to be transported from New York, or the State of origin of the shipment, into and through States other than New York, or the State of origin of the shipment, to the said purchasers.

PAR. 11. During the times mentioned and referred to in paragraph 3 hereof, other individuals, firms, and corporations than the Aqua Seal Corporation have been engaged in the business of the sale, to manufacturers and others engaged in the manufacture and sale of textiles and fabrics throughout the United States, of various materials and chemicals for use in various processes for processing, treating or finishing fabrics or textiles, including silk and velvet fabrics, by impregnating them with materials and chemicals used in such process, to avoid the effects of the penetration by, or the application of, water or other liquids or soiling material to such fabrics, such as water spots, and the said other individuals, firms and corporations have caused the said materials and chemicals, when so sold by them, to be transported from the State of origin of the shipment thereof, to, into, and through other States, to the purchasers.

PAR. 12. During the said times, other individuals, firms, and corporations than the respondent Duplan Silk Corporation are and have been engaged, some of them in the business of the sale of silk and velvet fabrics in their usual natural-finished condition when not subjected to processing, treating, or finishing by the Aqua-Sec or other such processes, and others of them in the business of the sale of silk and velvet fabrics which have been subjected to other processes than the Aqua-Sec process, for the purpose of impregnating the surface or pile of such fabrics, or textiles, to cause them to repel or resist penetration of them by water or other liquids or soiling material, and to avoid the effects of the application to them of water or other liquids or soiling material, and of penetration thereby, such as water spots.

PAR. 13. The respondents, during the times above mentioned and referred to, are and have been, respectively, in substantial competition, in interstate commerce, in the sale of velvet and silk fabrics, and in causing the processing and impregnating of such fabrics with materials and chemicals for the purpose above referred to, with the other individuals, firms, and corporations referred to in paragraphs 11 and 12 hereof.

PAR. 14. During the times above mentioned, the respondents, in connection with the sale of velvet and silk fabrics processed, treated or finished with the Aqua-Sec process, and sold or caused to be sold by the respondents and others to wholesale and retail dealers and resold by said dealers to the public for use or wear including the

velvet fabrics sold by respondent Duplan Silk Corporation under the name "L'Eau-Vel", or other trade name, have caused it to be stated and represented to the trade and public, in newspapers, periodicals, and other publications, and verbally through their agents and employees, that the said fabrics, including the said L'Eau-Vel velvet, processed, treated or finished with the Aqua-Sec process, were permanently waterproof and waterspot proof, and that they held these qualities or characteristics both before and after drycleaning, and further stated and represented to the trade and to the public that no other velvet or silk fabrics than those processed, treated, or finished by the Aqua-Sec process had the qualities or characteristics of being permanently waterproof and permanently waterspot proof before and after cleaning.

PAR. 15. The statements and representations made and caused to be made by respondents, mentioned and referred to in paragraph 14 hereof, were untrue when made, and were false representations of material facts concerning the effects of the use of the Aqua-Sec process on silk and velvet fabrics, and concerning the qualities of silk and velvet fabrics processed, treated, or finished by the Aqua-Sec process, including the velvet fabrics of the Duplan Silk Corporation and the clothing and garments made of them; and the respondents knew, at the time said statements and representations were made, or with the exercise of reasonable care should have known, that said statements and representations were untrue, and that the velvet and silk fabrics processed, treated, or finished by the Aqua-Sec process, including the said L'Eau-Vel velvet, and clothing or garments made from them, were not and are not permanently waterproof or waterspot proof, and do not and will not withstand the usual amount or number of drycleanings ordinarily given such fabrics, clothing or garments by members of the public during the reasonable life or use of such fabrics, or of the clothing and garments made of them.

PAR. 16. Other processes than the said Aqua-Sec process are and have been employed by other manufacturers of fabrics sold by them to wholesale and retail dealers, and to garmentmakers for resale to the public, for the purpose of processing, treating, or finishing such fabrics, including velvet and silk, by impregnating the surface or pile of the fabrics so as to repel and resist the application and the effect of the application to them of water or other liquids or soiling material, and said other manufacturers and wholesale and retail dealers do not represent that velvet and silk fabrics processed, treated, or finished with the other processes referred to were thereby made permanently waterproof, or permanently waterspot proof.

Complaint

19 F. T. C.

PAR. 17. The said statements and representations made and caused to be made by respondents, and mentioned and referred to in paragraphs 14 and 15 hereof, to the effect that no other velvet or silk fabrics than those processed, treated, or finished by the Aqua-Sec process had the said characteristics of being permanently waterproof and permanently waterspot proof before and after cleaning, falsely represented by implication that the velvet or silk fabrics, including L'Eau-Vel velvet, processed, treated, or finished by the Aqua-Sec process, had those said qualities.

PAR. 18. The statements and representations made and caused to be made by respondents, mentioned and referred to in paragraphs 14 and 15 hereof, had the capacity and tendency to deceive and mislead the trade and the public and the trade and public were deceived and misled thereby into believing among other things that silk and velvet fabrics which were subjected to the Aqua-Sec process were permanently waterproofed and waterspot proof; that the said fabrics, so treated or finished, and the clothing or garments made of them, were permanently waterproof and waterspot proof and that the said fabrics and clothing or garments retained and had such qualities before and after the usual cleaning or drycleaning ordinarily given such fabrics, clothing, or garments during their reasonable life or use; that the said fabrics so treated or finished and clothing or garments made of them, were the only silk and velvet fabrics, and clothing or garments, that had the said characteristics or qualities and that silk and velvet fabrics subjected to or treated and finished by other such processes did not have the said characteristics or qualities; and into relying on such belief, into buying the silk and velvet fabrics processed by the Aqua-Sec process, and clothing or garments made of them, including the velvet fabric L'Eau-Vel, and the clothing or garments made of it, in preference to the silk and velvet fabrics processed by other such processes and the clothing or garments made of them, as well as in preference to silk and velvet fabrics not processed for said purposes and clothing or garments made of such nonprocessed silk and velvet fabrics.

PAR. 19. In consequence of the above practices of the respondents in connection with the use and the effects of the use of the Aqua-Sec process, and in connection with the above statements and representations made by them and caused by them to be made by others, in the sale of silk and velvet fabrics, including L'Eau-Vel velvet, as above set forth, trade in the sale of silk and velvet fabrics was diverted from respondents' competitors to the respondents.

PAR. 20. The above acts and things done and caused to be done by the respondents are and were, each and all, to the prejudice of

217

Order

the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the meaning and intent 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", approved September 26, 1914.

ORDER TO CEASE AND DESIST

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. 717), the Federal Trade Commission on June 9, 1934, issued its complaint against the above named respondents, in which complaint it is alleged that the respondents are and have been using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act.

On August 14, 1934, the respondents filed their several answers to said complaint, wherein the respondents severally consented that the Federal Trade Commission may make, enter, and serve upon them an order to cease and desist from the violations of law alleged in the complaint in connection with the sale in interstate commerce of velvet fabrics processed, treated, or finished with the "Aqua-Sec" process of the respondent, Aqua Seal Corporation, in accordance with the provisions of section (2) of rule III of the Rules of Practice of the Commission, and the Commission being fully advised in the premises:

It is now ordered, That the respondents Aqua Seal Corporation and Duplan Silk Corporation, and each of them, their agents, employees, and representatives, in connection with the sale, advertising, and offering for sale in interstate commerce of velvet fabrics processed, treated, or finished with "Aqua-Sec" process, do—

Cease and desist, From stating or representing to the trade and public, in advertisements in newspapers, periodicals, or other publications, or otherwise causing to be stated or represented, either directly or indirectly, to the trade and public, that velvet fabrics processed, treated, or finished with the "Aqua-Sec" process are thereafter permanently waterproof and waterspot proof; or that velvet fabrics so treated or articles of clothing made of them have those qualities or characteristics after the ordinary and usual dry-cleaning to which they may be subjected in ordinary use and wear.

It is further ordered, That the complaint be and the same is hereby dismissed as to the charges of the use of unfair methods of competition in connection with the sale in interstate commerce of silk

Order

19 F. T. C.

fabrics processed, treated, or finished with the "Aqua-Sec" process of the respondent Aqua Seal Corporation.

It is further ordered, That the said respondents, Aqua Seal Corporation and Duplan Silk Corporation, shall each, within 30 days after date of service on them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they, respectively, have complied and are complying with the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF

LOUIS A. MILLER DOING BUSINESS UNDER TRADE
NAME SOUTHERN MILLING COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1617. Complaint, Sept. 5, 1929¹—Order, Sept. 5, 1934*

Consent order requiring respondent, doing business as aforesaid, his agents, etc., to cease and desist from carrying on the sale of flour in commerce among the several States, under name "Southern Milling Company", or any other name which includes the word "milling" or any other word or words of like import, and from making representations through advertisements, circulars, etc., or in any other manner designed to promote or affect interstate commerce, that he is a manufacturer of flour or that the flour sold by him comes direct from manufacturer to purchaser, unless or until respondent, doing business as aforesaid Southern Milling Company, using such word or words, or making such representations, actually owns and operates, or directly and absolutely controls, a factory or mill wherein is made by grinding or crushing the wheat berry, any and all flour sold or offered for sale by him under such title or name, or by or through any such representation; or "unless and until said respondent shall insert and use, also, the words 'Not Grinders of Wheat', in immediate conjunction with such trade name or other designation, in letters equally legible and conspicuous, when said trade name or other designation is used on stationery, letterheads, bags, containers, advertising matter, or otherwise."

Mr. Edward L. Smith and Mr. John W. Hildrop for the Commission.

Price, Schlater & Price, of Nashville, Tenn., for respondent.

COMPLAINT¹

Acting in the public interest 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 charges that Louis A. Miller, an individual, doing business under the trade name of Southern Milling Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

¹Amended.