

Complaint

21 F. T. C.

IN THE MATTER OF

FRANK LIVINGSTON, DOING BUSINESS AS BERKSHIRE
TEXTILE COMPANYCOMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2577. Complaint, Oct. 11, 1935—Order, Dec. 28, 1935*

Consent order requiring respondent, in the advertisement, sale and distribution of dress goods among the different States, to cease and desist from—

- (a) Falsely advertising or representing in any manner that he gives five yards of dress goods free to the customer with every fifteen yards ordered from him, or that customer will receive four yards of goods in each pattern or in one piece;
- (b) Advertising or representing in any manner by use of words "Direct to you", or any other words or phrases which by implication tend to create impression in minds of customers or prospective customers that he ships his products to such customers direct from a factory or mill, or that he is the owner or operator of, or controls, any factory in which his said products are made;
- (c) Advertising, etc., that his said goods, wares and merchandise are suitable for the purpose of making dresses or that they are "new and clean", when in fact soiled, stained, and damaged, or that they consist of the very newest and latest patterns for dresses;
- (d) Advertising, etc., that he guarantees satisfaction to his customers and refunds money to those purchasing his said goods, etc., who are dissatisfied therewith; or
- (e) Advertising, etc., that he sells fifteen yards of dress goods for ninety-seven cents, or that in the sale of his said goods, etc., and in quoting the price thereof, he is offering the customer a special bargain for any particular month or period of time.

Mr. John W. Hilldrop 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 Frank Livingston, doing business as Berkshire Textile Company, herein-after referred to as respondent, has been and is 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. Said respondent, Frank Livingston, doing business as Berkshire Textile Company, is an individual and has his principal office and place of business in the city of Brattleboro, in the State of Vermont. Said respondent has been for some time past engaged in the advertising, sale, and distribution of dress goods between and among different States of the United States. Said respondent has advertised, sold and distributed and has caused and still causes the said articles in which he deals to be transported to his place of business into and through other States of the United States other than the State of Vermont to various purchasers located at points in the various States of the United States.

In the course and conduct of his said business, the respondent is in competition with other individuals, partnerships, and corporations engaged in the sale, distribution, and transportation of like and similar goods, wares, and merchandise in commerce between and among the various States of the United States.

PAR. 2. The respondent advertises his business in newspapers and magazines having general circulation in the various States of the United States. The following statements and representations appear in such advertisements:

15 yds. DRESS GOODS Also Bargain! This Month Special Offer 5 Yards EXTRA

Ginghams, Percales, Prints, Voiles, Chambrays, Shirtings, Crepes, etc. New clean goods direct to you at a big saving. Latest assortment colors, 4 yards or more of each. The very newest patterns for dresses. Our finest quality. SEND NO MONEY. Pay Postman when delivered. 15 yards 97¢, plus delivery charges. 20 yards only \$1.29, postage prepaid if money accompanies order. Satisfaction guaranteed or money back. 97¢ Pstg. BERKSHIRE TEXTILE COMPANY Dept. 45 Brattleboro, Vt.

On the margin of the foregoing advertisement there is a pictorial representation of five bolts of alleged dress goods of various patterns between which there appear the following words: "Two bundles \$1.89—five yards given."

PAR. 3. The statements and representations made by respondent in his advertising, as set out above in paragraph 2 hereof, are each and all false and misleading to wit:

1. The respondent does not give five yards extra with each order.
2. Respondent does not own or operate a factory or mill, and the words "direct to you" which by implication states that respondent ships his goods, wares, and merchandise to the customer direct from the factory or mill, is false and untrue.
3. The goods, wares, and merchandise of respondent are wholly unsuited for dress purpose.

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4. Respondent does not guarantee satisfaction to the customers.
5. Respondent does not refund money to dissatisfied customers.
6. The statement "15 yards dress goods—97¢" is not true in that the said respondent does not give 15 yards for 97¢.
7. The 15 yards of goods referred to in the said advertisement set out in paragraph 2 hereof is not a special bargain for "this month" or any other month as advertised by the respondent.
8. The goods, wares, and merchandise of said respondent are not "new and clean" as advertised by him, but are soiled, stained, and damaged. Likewise, the statement "4 yards of each (pattern) or more" is misleading in that purchasers believe they will receive four yards in one piece. In truth and in fact no piece of goods contains four yards of the same pattern.
9. The statement "the very newest, very latest patterns for dresses" is false in that such patterns as delivered are not the latest.

PAR. 4. The above representations made by the respondent are each and all to the prejudice and injury of the public and the respondent's competitors, and constitute unfair methods of competition in commerce 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", approved September 26, 1914.

ORDER TO CEASE AND DESIST

The respondent herein, having filed his answer to the complaint in this proceeding in October 16, 1935, in the form of a letter from the respondent directed to the Federal Trade Commission, which answer is not sufficient to constitute a joinder of issue on the allegations contained in the complaint, and respondent having thereafter, on the 6th day of December, 1935, filed his amended and supplemental answer to the complaint wherein he waived hearings on the charges set forth in the complaint in this proceeding, and he having stated in his said amended and supplemental answer that he does not contest this said proceeding, and having consented in his said amended and supplemental answer that the Commission, without trial, without evidence, and without findings as to the facts or other intervening procedure, might make, enter, issue and serve upon him, the said respondent, an order to cease and desist from the methods of competition charged in the complaint; and the Commission being fully advised in the premises,

It is hereby ordered, That the respondent, Frank Livingston, doing business as Berkshire Textile Company, in the advertising, sale and distribution of dress goods between and among the different States of the United States, cease and desist from:

(a) Advertising or representing in any manner that respondent gives five yards of dress goods free to the customer with every 15 yards ordered from him, unless in truth and in fact respondent does

give the purchaser five yards extra with each 15 yards bought by such purchaser.

(b) Representing or advertising in any manner by use of the words "Direct to you", or any other words or phrases which by implication tend to create the impression in the minds of customers or prospective customers that respondent ships his goods, wares, and merchandise to such customers direct from a factory or mill, or that respondent is the owner or operator of, or has control of any factory or factories in which the goods, wares and merchandise sold by him are made.

(c) Advertising or representing in any manner that the goods, wares and merchandise of respondent are suitable for the purpose of making dresses.

(d) Advertising or representing that the respondent guarantees satisfaction to his customers purchasing his goods, wares, and merchandise.

(e) Advertising or representing that respondent refunds money to his customers purchasing his goods, wares, and merchandise, who are dissatisfied therewith.

(f) Advertising or representing that respondent sells 15 yards of dress goods for 97¢.

(g) Advertising or representing that respondent, in the sale of his goods, wares and merchandise, when quoting the price thereof is offering the customer a special bargain for any particular month or period of time.

(h) Advertising or representing that the goods, wares, and merchandise of said respondent, which are soiled, stained, and damaged, as "new and clean."

(i) Advertising or representing that the customer will receive four yards of goods in each pattern or in one piece, unless in truth and in fact respondent does sell and deliver to such customer or customers four yards or more of goods in one and the same piece or pattern.

(j) Advertising or representing that his goods, wares and merchandise consist of the very newest and very latest patterns for dresses.

And it is hereby further ordered, That the said respondent, Frank Livingston, doing business at Berkshire Textile Company, shall within 60 days after the service upon him of this order to cease and desist, file with this Commission a report in writing setting forth in detail the manner and form in which he shall have complied with the order to cease and desist hereinbefore set forth.

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IN THE MATTER OF

REAL PRODUCTS CORPORATION AND REALFLEX
PRODUCTS CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2261. Complaint, May 9, 1935¹—Order, Dec. 31, 1935*

Where a corporation engaged in the manufacture of automotive and metal specialties, including spark plug cable sets, spark plugs, and porcelains therefor, and in the sale of said products among the various States and territories and in the District of Columbia, had long applied designation "Champion" to its aforesaid products, and through use thereof in its corporate name and on its stationery and cartons, and in its advertising matter, had caused said word to signify and mean to trade and purchasing public that automotive and metal specialties thus designated were its products; and thereafter two companies, engaged under common control in manufacture of similar specialties, including spark plug cable sets, without consent of said corporation, used and continued to use trade designation and name "Champion" for their aforesaid products on their cartons and in their price lists and advertising matter;

With effect of deceiving retail dealers and purchasing public into believing that their aforesaid products were those of said corporation, and with tendency and capacity so to do, and unfairly to divert trade to them from competitors who do not use such deceptive and misleading names for their products:

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

Before *Mr. Edward M. Averill*, trial examiner.

Mr. John W. Hildrop for the Commission.

COMPLAINT¹

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 the Real Products Corporation and Realflex Products Corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest,

¹ Amended and supplemental.