

IN THE MATTER OF
CANTON SILK MILLS, INC.

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

Docket 2618. Complaint, Nov. 8, 1935—Decision, May 26, 1936

Where a corporation engaged in the purchase of raw griegie or unfinished silk and rayon cloths and fabrics from weavers and manufacturers and in causing said cloths and fabrics to be dyed, printed, or processed into finished dry goods and materials by others and in selling such finished goods and materials to various retailers, members of the cutting-up trade, and others—

Represented and implied, through display and use of its trade name containing the words "Silk Mills", and the language "Mills: Riverside, Rhode Island, Phenix, Rhode Island", on advertising cards, letterheads, bills, invoices, and other printed matter, that it owned, operated, and maintained or controlled one or more mills for the manufacture of silks or silk goods;

Facts being it was not engaged in the manufacture, printing, processing or dyeing of silk or silk material or rayon or rayon materials and did not own, operate, maintain or control any such mill or plant in which such fabrics were made, dyed, printed, or processed, or own, control, operate, or maintain any mill or plant for manufacturing, dyeing, printing, or processing such fabrics at the aforesaid places or at any other place whatsoever;

With effect of deceiving and misleading customers and prospective customers of such finished silk and rayon goods and materials into the belief that the products thus offered and sold by it were made by it in mills which it owned and operated or maintained and controlled, and of inducing such customers to purchase such products from it because of such erroneous belief, and in response to the preference of certain customers for dealing directly with the manufacturer as eliminating the profit of the middleman, or as giving customer more uniformity in quality and design, and of diverting trade thereby to it from competitors, among whom there are those who truthfully represent and denominate themselves as engaged in the manufacture of such products and those engaged in the purchase and resale thereof, and who do not respectively misrepresent themselves as owners and operators of mills and factories in which their products are made, dyed, or printed and processed:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. John Darsey for the Commission.

Mr. Morris A. Schoenfeld, of New York City, for respondent.

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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 Canton Silk Mills, Inc., a corporation, hereinafter referred to as the respondent, has been and is 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, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 469 Seventh Avenue, New York, N. Y.; that William H. Cohen is president and treasurer of said corporation, and Martha Cohen is the secretary and vice president thereof; that the board of directors of said corporation consists of William H. Cohen, Martha Cohen, and Martin Goldberg.

PAR. 2. Respondent is now and has been since about 1933 engaged in the business of buying silk and rayon cloths and fabrics in the raw, grieger, or unfinished state, of procuring or causing said cloths and fabrics to be dyed, printed, or processed by others into finished goods or materials suitable for sale to dry goods retailers and the cutting-up trade, and of offering for sale and selling said finished goods and materials to prospective and actual purchasers. In the course and conduct of its said business, respondent buys raw grieger or unfinished silk and rayon cloths and fabrics from weavers and manufacturers located in various States of the United States, and causes the raw grieger or unfinished cloths and fabrics to be dyed, printed, or processed into finished dry goods and materials by others in the State of New York and other States, and offers for sale and sells such finished goods and materials to various retailers, members of the cutting-up trade and others in States of the United States other than the State of New York, including the District of Columbia and the State of New York. Pursuant to such converting and selling operations, respondent ships and transports or causes to be shipped and transported from its place of business in the State of New York to, into, and through various States of the United States, finished silk and rayon fabrics and materials to the purchasers thereof located in States other than the State of New York. Respondent, in the course and conduct of its said business, is in sub-

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stantial competition with other corporations, firms, associations, partnerships, and individuals likewise engaged in procuring the dyeing, printing, converting, and processing of raw silk and rayon cloths and fabrics into finished materials and in offering for sale and selling such finished materials and transporting the same from the States in which such competitors have their respective places of business, including the State of New York, to, into, and through other States of the United States. Respondent is also in substantial competition with weavers and manufacturers of silk and rayon cloths and material who themselves dye, print, convert, and process such fabrics so manufactured by them and offer the finished goods or materials for sale and sell and transport the same from the States in which such weavers and manufacturers have their respective places of business, including the State of New York, to, into, and through other States of the United States.

PAR. 3. Respondent in purchasing said raw silk and rayon cloths and fabrics and in causing the same to be dyed, printed, processed, or converted into finished materials, and in offering for sale and selling said finished goods, employs salesmen, agents, and representatives to approach and contact prospective purchasers for said finished products, said prospective purchasers usually being dry goods retailers or members of the cutting-up trade; respondent also corresponds with various weavers, manufacturers of raw goods, dyers, printers, processors, retailers, and members of the cutting-up trade, and distributes among them and to prospective purchasers advertising cards and other printed matter. Respondent, since about the year 1933, has represented and does represent by the use of its corporate name and by other means, as hereafter set forth, to such prospective and actual purchasers of finished silk and rayon goods and materials and to the general public, that it owns, operates, maintains, or controls mills, plants, and factories for the manufacture of silk or silk goods and rayon or rayon goods, and particularly that it owns, maintains, and operates two such mills at Riverside, R. I., and Phenix, R. I. Respondent has adopted and used and is using the name "Canton Silk Mills, Inc." as a trade name and the use of said name in the course and conduct of its said business, both by itself and in conjunction with the word "Silks", with which it is also used imports and implies that respondent owns, operates, maintains, or controls one or more mills or manufacturing establishments for the manufacture of silks or silk goods. Envelopes and letterheads distributed in interstate commerce did and do contain the said corporate name and the word "Silks", together with the words "Mills: Riverside, R. I., Phenix, R. I.", and advertising cards and other printed matter printed and dis-

tributed by respondent in interstate commerce also contain similar or identical language, which imports or implies that respondent owns, operates, maintains, or controls mills at such places.

PAR. 4. In truth and in fact the respondent is not and has not been engaged in the manufacture, printing, processing, or dyeing of silk or silk materials, or rayon, or rayon materials, or mixtures of the two; nor does it own or operate, maintain, or control, nor has it owned, operated, maintained, or controlled any mill, plant, or factory wherein such silk or rayon fabrics are being or have been manufactured, dyed, printed, or processed; that respondent does not nor has it since 1933, owned, controlled, operated, or maintained any mill, plant, or factory for the manufacture, dyeing, printing, or processing of silk or rayon fabrics at Riverside, R. I., or at Phenix, R. I., or at any other place whatsoever; on the contrary, respondent buys raw silk and rayon cloths or fabrics from the weaver or manufacturer thereof and by contract or on a commission basis employs commission weavers, who are separate and distinct entities from the respondent, to dye, print, convert, and process such raw materials into finished goods.

PAR. 5. Among the competitors of the respondent there are corporations, partnerships, firms, and persons who are engaged in the same business as respondent, as hereinabove described, who truthfully represent and denominate themselves as being engaged in such business and who do not falsely claim to be manufacturers, who do not represent that they own, control, operate, or maintain mills for the manufacture of silk or rayon materials, when such is not the fact, and who do not represent that they own, control, operate, or maintain mills at Riverside, R. I., or at Phenix, R. I., or any other place, when such is not the fact.

PAR. 6. That there is a preference on the part of certain customers for such finished silk and rayon materials, in different States of the United States, for finished silk and rayon goods and materials bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said customers that by dealing directly with a mill owner or manufacturer they can eliminate the profit of the middleman and that they can buy such goods at a cheaper price and on more favorable terms from such mill owner or manufacturer than they can from converters and middlemen, such as respondent, not manufacturing such goods and materials.

PAR. 7. The adoption and use by respondent of the name "Canton Silk Mills, Inc.", as aforesaid, both independently and in conjunction with the words with which it has been used and is being used,

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and the statement contained in its printed matter so circulated, comprising the words "Mills: Riverside, R. I., Phenix, R. I.", as aforesaid, have had and still do have the tendency and capacity to mislead and deceive and the same have deceived and misled and do deceive and mislead customers and prospective purchasers of such finished silk and rayon goods and materials into the belief that said products so offered for sale and sold by respondent are manufactured by it in mills owned and operated or maintained and controlled by respondent, and that by buying from the respondent such customers and prospective purchasers will eliminate and save the middleman's profit. That the use of said corporate name and the words above quoted in the manner stated have induced and do induce such customers and prospective purchasers to purchase said products from respondent on account of such erroneous belief thereby engendered, and by such means trade has been and is diverted to respondent from its competitors, to the substantial injury of the latter.

PAR. 8. The practices of respondent hereinabove described are all to the prejudice and injury of the public and of respondent's competitors, and have been and are unfair methods of competition in interstate commerce in violation of the provisions of Section 5 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."

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, on the 8th day of November, 1935, issued and served its complaint in this proceeding upon respondent, Canton Silk Mills, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act. After the issuance of said complaint, testimony and evidence, in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Morris A. Schoenfeld, attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and evidence, and brief in support of the complaint; and the Commission

having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Canton Silk Mills, Inc., is a corporation existing by virtue of the laws of the State of New York, with its principal office and place of business at 469 Seventh Avenue, New York, N. Y. It is now, and for several years last past, has been engaged in the business of buying silk and rayon cloths and fabrics in the raw, griegie or unfinished state, of procuring or causing said cloths and fabrics to be dyed, printed, or processed by others, into finished goods or materials suitable for sale to dry goods retailers, and the cutting-up trade, and of offering for sale and selling said finished goods and materials to prospective and actual purchasers. The respondent in the course and conduct of its said business, buys raw, griegie, or unfinished silk and rayon cloths and fabrics from weavers and manufacturers, and causes the raw, griegie, or unfinished cloths and fabrics to be dyed, printed or processed into finished dry goods and materials by others, and offers for sale and sells such finished goods and materials to various retailers, members of the cutting-up trade, and others in the States of the United States other than the State of New York. Pursuant to such converting and selling operations, respondent ships and transports, or causes to be shipped and transported from its place of business in the State of New York to, into and through various States of the United States, finished silk and rayon fabrics and materials to the purchasers thereof located in States other than the State of New York.

PAR. 2. In the course and conduct of its said business, respondent is in substantial competition with other corporations, firms, associations, partnerships and individuals likewise engaged in procuring the dying, printing, converting and processing of raw silk and rayon cloths and fabrics into finished material, and in offering for sale and selling such finished materials and transporting the same from the States in which such competitors have their respective places of business, to, into, and through other States of the United States. Respondent is also in substantial competition with weavers and manufacturers of silk and rayon cloths and materials, who, themselves, dye, print, convert, and process such fabrics so manufactured by them, and offer the finished goods or materials for sale, and sell and transport the same from the States in which such weavers and

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manufacturers have their respective places of business, to, into, and through other States of the United States. The respondent, in the course of the sale of the aforesaid products, in the manner set forth in paragraph 1, supra, corresponds with various weavers, manufacturers of raw goods, dyers, printers, processors, retailers and members of the cutting-up trade, located in the various States of the United States, and distributes among them and its prospective purchasers, advertising cards, letterheads, bills, invoices, and other printed matter, which said printed matter contains the trade name "Canton Silk Mills, Inc.", and the language—"Mills: Riverside, R. I.—Phenix, R. I.", with which said trade name and language respondent represents, imports, and implies that it owns, operates, maintains, or controls, one or more mills or manufacturing establishments for the manufacture of silks or silk goods.

PAR. 3. In truth and in fact the respondent is not and has not been engaged in the manufacture, printing, processing or dyeing of silk or silk materials, or rayon, or rayon materials; nor does it own or operate, maintain or control, any mill, plant, or factory, wherein such silk or rayon fabrics are manufactured, dyed, printed, or processed; the respondent does not own, control, operate, or maintain any mill, plant, or factory for the manufacturing, dyeing, printing, or processing of silk or rayon fabrics at Riverside R. I., or at Phenix, R. I., or at any other place whatsoever.

PAR. 4. There are, among the competitors of respondent, corporations, partnerships, firms, and persons who are engaged in the same business as respondent, as hereinabove described, who truthfully represent and denominate themselves as being engaged in the manufacture and sale of silk and rayon products, and who do not falsely claim to be manufacturers and owners of mills when such is not the fact. There are also among the competitors of respondent, corporations, firms, and individuals who are engaged in the purchase and resale of silk and rayon products, who do not represent themselves to be owners and operators of mills and factories in which their products are manufactured, dyed and printed or processed.

PAR. 5. There is a preference on the part of certain customers for such finished silk and rayon materials to deal directly with the manufacturer thereof and thus eliminate the profit of the middleman. There is also a belief and impression existing among certain customers of silk and rayon materials that more uniformity of quality and design may be obtained by dealing directly with the manufacturer thereof. The use by respondent of the name "Canton Silk Mills, Inc." and the language "Mills: Riverside, R. I., Phenix, R. I." is calculated to create such a belief and impression.

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nix, R. I.", on its printed matter as aforesaid, has had and has the tendency and capacity to mislead and deceive, and the same has deceived and misled, and does deceive and mislead customers and prospective purchasers of such finished silk and rayon goods and materials into the belief that said products so offered for sale and sold by respondent, are manufactured by it in mills owned and operated or maintained and controlled by respondent. The use of said corporate name and the words above quoted in the manner set forth, supra, have induced and do induce customers and prospective purchasers to purchase said products from respondent because of the erroneous belief thereby engendered, and by such means trade has been and is diverted to respondent from its competitors to the substantial injury of the latter.

CONCLUSION

The practices of respondent under the conditions and circumstances set forth in the foregoing findings are to the prejudice of the public and of respondent's competitors, and are unfair methods of competition in commerce, and constitute a violation of Section 5 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, testimony and evidence taken before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said 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, Canton Silk Mills, Inc., a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, and sale of their silk and rayon products in interstate commerce, forthwith cease and desist from:

Representing through their trade name and through their invoices, letterheads, statements, labels, and other printed matter, or in any

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other manner, by the use of the words "Mill" or "Mills" or "Manufacturers", and through the use of any other word or words of similar import and meaning, that respondent owns, operates, or controls a mill or mills in which its said products are manufactured, dyed, printed, or processed.

It is further ordered, That within 60 days from the date of service of this order upon said respondent, it shall file with the Commission a report in writing, setting forth in detail the manner and form in which this order has been complied with.

Syllabus

IN THE MATTER OF

NEW YORK STATE WHOLESALE CONFECTIONERY
ASSOCIATIONS, INC., ET AL.

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

Docket 2613. Complaint, Nov. 6, 1935—Decision, June 1, 1936

Where the members of eight State associations, engaged in the sale of candy and allied products at wholesale between and among the various States and in the District of Columbia, and in purchasing the products thus dealt in by them from manufacturers located, for the most part, in States other than New York and Pennsylvania, and naturally and normally in competition with one another and with others similarly engaged in the purchase and resale of candy, and constituting a large and important part of all the distributors and wholesalers in candy, confectionery, and allied products in their respective territories and areas, and so large and influential a group, in the case of each of their said associations, as to be able to control and influence the flow of trade and commerce in said products within, to, and from the areas in which their respective associations trade; and said associations, and their State associations into which they were allied and banded together and thus enabled more effectively to exercise control of and influence trade and commerce involved for the promotion and enhancement of their own respective volume of trade and commerce, and representing all together a volume of consumption and trade in commerce constituting an important part of that of the United States in the industry concerned, and, in respect of the trade areas served by the respective associations, a large important outlet for the sale of candy and allied products by manufacturers and distributors within such area and by those in other States and particularly east of the Mississippi River, and a volume of business, taken together, constituting a substantial part of all the business done by wholesalers of candy and allied products in the States of New York and Pennsylvania—

- (a) Agreed among themselves to prevent nonmember competitors from obtaining such products directly from the manufacturers thereof, to establish themselves as a class of recognized wholesalers, distributors, and brokers of said products in their respective areas, to fix and establish uniform prices at which the various members should sell such products, and to prevent others from selling at lower prices, and thereby to suppress, hinder, and lessen competition in interstate commerce in the sale and distribution of said products in their aforesaid territories, and in pursuance of such purposes—
- (1) Fixed and maintained uniform prices for candy and allied products sold by them and induced manufacturers not to sell to anyone who sold or would resell at a lower price;
- (2) Exacted and procured pledges and promises from each recognized dealer and member of the respective associations and from manufacturers and producers of such products, to the effect that such dealers, members, manufacturers, and producers would support and enforce their aforesaid program;