

IN THE MATTER OF
T. S. CRAIG, DOING BUSINESS AS UNITED SILK COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2490. Complaint, July 3, 1935—Decision, Sept. 1, 1936

Where an individual engaged in offer, sale, and distribution of hosiery to purchasers among the several States and in soliciting orders therefor in person and through salesmen, by house-to-house canvass in various towns and cities, and demanding and receiving, at time of order, part or all of purchase price, with any unpaid balance C. O. D., and in exhibiting, in course of such solicitations, purported samples of each quality or grade and order blank purportedly showing mill number, regular retail price, and description of each style, number or sample, along with representation that various samples were respectively representative of the hosiery described and identified by purported mill numbers—

- (a) Filled orders with hosiery which differed in size or color or quality from that ordered and was inferior in quality or grade to that of sample chosen and indicated by purported mill number description, notwithstanding his representation to purchasers that he would deliver goods of size and color desired and selected and of the quality or grade represented by samples chosen and indicated by purported mill number description;
- (b) Accepted all or part of purchase price for such hosiery which differed in size, etc., from that ordered, and was not delivered to purchaser at time promised, or at all, notwithstanding his aforesaid representations as to size, color, and quality or grade, and failed and refused to make good his aforesaid representations and promises and to deliver to purchasers hosiery of size, color, and quality or grade ordered, or to refund purchase price paid therefor;
- (c) Falsely promised, in many instances, to include free pair with order for as many as six, as inducement to prospect to purchase the larger quantity, and, in such instances, failed and refused so to do at time of shipment, or to make good such promise through delivery of free pair upon having his attention called to failure to include, as promised, such pair;
- (d) Represented, in many instances, to prospective purchasers that his hosiery would wear for a specified length of time and usually guaranteed six months' wear for three pairs and a year for six, and promised, in event of their failure so to wear, to replace worn with new hosiery until expiration of guarantee period, notwithstanding fact said goods did not and would not, under normal conditions, wear for period specified and he did not make such replacements;
- (e) Represented, through said order blanks, exhibited to prospective purchasers as aforesaid and display thereon of purported mill numbers and description of hosiery designated thereby or otherwise, and use of trade name including words "United Silk Company", together with designation "Dallas Office", that such purchasers were dealing with an established, substantial concern which carried in stock or had available for delivery hosiery of quality or grades indicated as aforesaid, facts being so-called company was a trade name merely and not an established, substantial business and

Complaint

had no "Dallas Office" other than said individual's residence in said city, and such individual had no offices elsewhere and did not carry in stock or have available for delivery hosiery in qualities or grades indicated by mill numbers, but filled orders by purchasing from various merchants in aforesaid city hosiery of no fixed quality or grade, but inferior to qualities or grades exhibited and indicated as above set forth, and purchased same wherever he could secure most advantageous price; and

- (f) Represented as regular retail prices for such products purported prices therefor, including deposit and C. O. D. amounts displayed on said order blanks, exhibited as aforesaid, together with an enumeration of different items of hose offered, and supposed mill number, and caused purchasers to believe that they were the regular prices for said goods and accepted orders at prices ranging from one-half to one-third of those indicated, and thereby lead purchasers to believe that they were buying hosiery of quality or grade indicated at a substantial reduction from regular prices, facts being prices thus displayed were wholly fictitious;

With effect of misleading and deceiving prospective purchasers into erroneous belief that said false and fraudulent representations were true and that he would perform such false and fraudulent promises, and of causing substantial number of prospective purchasers to buy said goods in lieu of those of competitors, which, but for such acts and practices, they would purchase, and of thereby substantially diverting trade to himself from his competitors; to their injury and that of the public:

Held, That such acts and practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition in violation of section 5.

Before *Mr. W. W. Sheppard*, trial examiner.
Mr. Edw. W. Thomerson 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 T. S. Craig, hereinafter 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 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. Respondent is an individual trading as the United Silk Company, with his principal place of business in the city of Dallas, State of Texas. Respondent is now, and has been for the several years last past, engaged in offering for sale, selling, and distributing hosiery to purchasers in commerce among the several States of the United States. Respondent causes said hosiery when sold, to be transported from his principal place of business in the city of Dallas, State of Texas, into and across the several States of the

Complaint

23 F. T. C.

United States to the purchasers thereof located at various points in the said several States of the United States, other than the State of Texas. Other persons and corporations, associations, and partnerships, who do not use the methods of competition used by the respondent as hereinafter alleged, are engaged in offering for sale, selling, and distributing hosiery to purchasers in said commerce among the several States of the United States.

Respondent, in the course and conduct of his business in said commerce as aforesaid, is in substantial competition with such other persons and corporations, associations, and partnerships in offering for sale, selling and distributing said products in said commerce.

PAR. 2. Respondent, in the course and conduct of his business in said commerce as above alleged, personally, and at times through salesmen employed by him, solicits and accepts orders for said hosiery by canvassing from house to house in various towns and cities located in the several States of the United States, contacting prospective purchasers for his said product. When an order is secured, respondent demands and receives a part or all of the purchase price and promises to make delivery of the order by mail at a subsequent date. If all of the purchase price is not paid at the time the order is accepted, the merchandise is to be sent C. O. D. for the balance due. Respondent, in person and through said salesmen, in so soliciting and accepting orders for hosiery, exhibits to prospective purchasers purported samples of each quality or grade of hosiery sold by him, and exhibits an order blank which purports to show the mill number, the regular retail price and a description of each of the samples exhibited.

PAR. 3. Respondent, in the course and conduct of his business in said commerce as aforesaid, represents that each of said samples exhibited is representative of the hosiery described and identified by one of the purported mill numbers on the order blank, and falsely and fraudulently represents to purchasers of his hosiery that he will deliver to them hosiery of the size and color desired and selected and of the quality or grade represented by the sample selected and as indicated by the purported mill number description. In truth and in fact respondent ships hosiery of a quality or grade inferior to the sample selected and of a quality and grade inferior to that indicated by the purported mill number description, and not of the size and color selected by the purchaser. After discovery and complaint by the purchaser of the size, color, and inferior quality or grade of the hosiery delivered by the respondent, the respondent fails and refuses to make good his representations and promises and to deliver the hosiery ordered or to refund the purchase price therefor.

PAR. 4. Respondent, in the course and conduct of his business in said commerce as aforesaid, in many instances represents to prospective purchasers that his hosiery will last for a specified length of time, usually that three pairs will last for 6 months and that six pairs will last for 1 year, and promises that, if it does not last the prescribed period of time, he will replace the worn hosiery with new hosiery until the expiration of the period of time for which the guarantee is made. In truth and in fact said hosiery will not and does not, under normal wear, last for the period of time specified and the respondent will not and does not replace worn hosiery with new hosiery until the expiration of such period of time as promised.

PAR. 5. Respondent, in the course and conduct of his business in said commerce as aforesaid, in many instances, to induce prospective purchasers to purchase a larger quantity of hosiery, promises to include one pair free if as many as six pairs are ordered. In such instances, the respondent fails and refuses to include the so-called free pair in the order when shipment is made, but ships only the number of pairs ordered and for which payment is made, and he thereafter fails and refuses to deliver said free pair as promised.

PAR. 6. Respondent, in the course and conduct of his business in said commerce as aforesaid, in many instances, solicits and accepts orders for hosiery, demanding and receiving payment of all or a substantial part of the purchase price, promising to make delivery of the hosiery ordered by mail, and does not thereafter make delivery of any hosiery to such purchaser nor does he return to such purchaser all or any part of the advance payment made.

PAR. 7. The order blanks exhibited to prospective purchasers by the respondent are, in part, substantially as follows:

Pay Only Deposit as Printed

Dallas Office		UNITED SILK CO. Dallas, Texas	
Mill No.			
102	Ladies Chiffon Hose.....	Deposit.....	3.75
	6 PAIR FOR 15.00.....	C. O. D	11.25
100	Ladies Silk Hose.....	Deposit.....	2.50
	6 PAIR FOR 10.00.....	C. O. D	7.50
108	Ladies Full Fashioned Hose.....	Deposit.....	3.25
	6 PAIR FOR 13.00.....	C. O. D	9.75
102-A	Ladies Service Hose.....	Deposit.....	1.50
	6 PAIR FOR 6.00.....	C. O. D	4.50
600	Men's Fancy Silk Hose.....	Deposit.....	1.50
	6 PAIR FOR 6.00.....	C. O. D	4.50
300	Guaranteed Men's Hose.....	Deposit.....	1.00
	6 PAIR FOR 3.00.....	C. O. D	2.00

Complaint

23 F. T. C.

The use on said blanks of the name "United Silk Co." and the designation "Dallas Office" and the use of the term "Mill No." with the description and purported price of each quality or grade is calculated and intended by the respondent to and does cause such prospective purchasers to believe that they are dealing with an established, substantial concern which carries in stock or has available for delivery hosiery of the qualities or grades indicated by the mill number. In truth and in fact the "United Silk Co." is a trade name used by the respondent and is not an established, substantial business and has no Dallas, Tex., office other than respondent's residence, nor has respondent an office elsewhere, and respondent does not carry in stock nor has he available for delivery hosiery of the qualities or grades indicated by the mill number, but he fills the orders secured by purchasing from various merchants in Dallas, Tex., wherever the price is most advantageous, hosiery of no fixed quality or grade and inferior to the qualities and grades exhibited and indicated by the mill number.

The prices printed on said order blanks are fictitious, without any basis in fact, and are calculated and intended to and do cause purchasers to believe that the price indicated is the regular price for each mill number as indicated. Respondent represents to purchasers that he is making a special offer and accepts orders for hosiery at prices ranging from one-third to one-half of the prices indicated on said order blank.

PAR. 8. The above alleged acts and practices of the respondent have the capacity and tendency to and do mislead and deceive prospective purchasers of hosiery into the erroneous belief that such false and fraudulent representations are true and have the capacity and tendency to and do cause a substantial number of such prospective purchasers to purchase respondent's said hosiery in lieu and instead of the hosiery of his competitors, which such prospective purchasers would purchase but for the acts and practices of the respondent, thereby substantially diverting trade to the respondent from his competitors.

PAR. 9. The above alleged acts and practices of the respondent are all to the injury and prejudice of the public and of the competitors of respondent, and constitute unfair methods of competition within the intent and meaning 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."

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 3rd day of July A. D. 1935, issued its complaint against the respondent, T. S. Craig, trading as the United Silk Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, no answer having been filed by the respondent, testimony and evidence, in support of the allegations of the said complaint, were introduced by Edw. W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, no testimony or evidence being offered in defense of the allegations of the complaint by the respondent; and said testimony and evidence were 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, brief in support of the complaint, no brief having been filed by the respondent, and oral argument having been waived; and the Commission having duly considered the record 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent T. S. Craig is an individual trading as the United Silk Company, with his principal place of business in the city of Dallas, and State of Texas. Respondent has been for the several years last past engaged in offering for sale, selling, and distributing hosiery to purchasers in commerce among the several States of the United States. Respondent causes said hosiery, when sold, to be transported from Dallas, Tex., to the purchasers thereof located at various points in the said several States of the United States other than the State of Texas. Many other persons and many corporations, associations, and partnerships, who do not use the methods of competition used by the respondent as hereinafter set out, are engaged in offering for sale, selling, and distributing hosiery to purchasers in said commerce among the several States of the United States, and the respondent, in the course and conduct of his business, is in substantial competition with such persons, corporations, associations, and

Findings

23 F. T. C.

partnerships in offering for sale, selling, and distributing said hosiery in said commerce.

PAR. 2. Respondent, in the course and conduct of his business in said commerce, personally and at times through salesmen employed by him, solicits and accepts orders for hosiery by canvassing from house to house in various towns and cities, located in the several States of the United States. When an order is secured, the respondent demands and receives a part or all of the purchase price and promises to make delivery of the order by mail at a subsequent date. If all of the purchase price is not paid at the time the order is accepted, the hosiery is to be sent C. O. D. for the balance due.

Respondent, in person and through said salesmen, in so soliciting and accepting orders for hosiery exhibits to prospective purchasers purported samples of each quality or grade of hosiery for which he solicits and accepts orders, and exhibits to prospective purchasers an order blank which purports to show the mill number, the regular retail price, and a description of each of the samples exhibited, and represents that each of said samples exhibited is representative of the hosiery described and identified by one of the purported mill numbers of said order blank.

PAR. 3. Respondent represents to purchasers of his hosiery that he will deliver to them hosiery of the size and color desired and selected and of the quality or grade represented by the sample selected and as indicated by the purported mill number description. In truth and in fact respondent ships to said purchasers hosiery of a quality or grade inferior to the sample selected and of a quality or grade inferior to that indicated by the purported mill number description, and of a size and color other than that selected by such purchasers. After discovery and complaint by said purchasers as to the size, color, and inferior quality or grade of the hosiery delivered by the respondent, he fails and refuses to make good his representations and promises and to deliver to such purchasers hosiery of the size, color, and quality or grade ordered, or to refund the purchase price paid therefor.

PAR. 4. Respondent, in many instances, represents to prospective purchasers that his hosiery will wear for a specified length of time, usually guaranteeing that three pairs will wear for 6 months and that six pairs will wear for 1 year, and promises that, if the hosiery ordered does not wear the prescribed length of time, he will replace the worn hosiery with new hosiery until the expiration of the period of time for which the guarantee is made. In truth and in fact, said hosiery will not and does not, under normal conditions, wear for the period of time specified, and the respondent does not replace worn

368

Findings

hosiery with new hosiery until the expiration of the period of time for which the hosiery is guaranteed.

PAR. 5. Respondent, in many instances, to induce prospective purchasers to purchase a larger quantity of hosiery, promises to include one pair free if as many as six pairs are ordered and, in such instances fails and refuses to include the promised free pair in the order when shipment is made, and ships only the number of pairs ordered and for which payment is made; and thereafter, when his attention is called to the fact that he has not included the promised free pair, refuses and fails to make good his promise by delivering said so-called free pair of hosiery.

PAR. 6. Respondent, in many instances, after having solicited and accepted orders for hosiery and having received payment of all or a substantial part of the purchase price and promising to make delivery of the hosiery ordered by mail, does not make delivery of any hosiery at all to such purchasers, nor does he return to such purchasers all or any part of the advance payment made.

PAR. 7. The order blanks exhibited to prospective purchasers by respondent are, in part, substantially as follows:

Pay Only Deposit as Printed

UNITED SILK CO.

Dallas
Office

Dallas, Texas

Mill No.

102	Ladies Chiffon Hose.....	Deposit.....	3. 75
	6 PAIR FOR 15.00.....	C. O. D.....	11. 25
100	Ladies Silk Hose.....	Deposit.....	2. 50
	6 PAIR FOR 10.00.....	C. O. D.....	7. 50
108	Ladies Full Fashioned Hose.....	Deposit.....	3. 25
	6 PAIR FOR 13.00.....	C. O. D.....	9. 75
102-A	Ladies Service Hose.....	Deposit.....	1. 50
	6 PAIR FOR 6.00.....	C. O. D.....	4. 50
600	Men's Fancy Silk Hose.....	Deposit.....	1. 50
	6 PAIR FOR 6.00.....	C. O. D.....	4. 50
300	Guaranteed Men's Hose.....	Deposit.....	1. 00
	6 PAIR FOR 3.00.....	C. O. D.....	2. 00

The use on said blanks of the name "United Silk Co." and the designation "Dallas Office," and the use of the term "Mill No." with the description and purported price of each quality or grade of hosiery, causes purchasers to believe that they are dealing with an established, substantial concern which carries in stock or has avail-

Conclusion

23 F. T. C.

able for delivery hosiery of the qualities or grades indicated by the mill number. In truth and in fact the "United Silk Company" is a trade name used by the respondent and is not an established, substantial business and has no "Dallas Office," other than that the respondent's residence is in Dallas, nor has the respondent offices located elsewhere, and respondent does not carry in stock nor has he available for delivery hosiery of the qualities or grades indicated by the mill numbers, but fills orders secured by purchasing from various merchants in Dallas, Tex., hosiery of no fixed quality or grade and inferior to the qualities or grades exhibited and indicated by the mill numbers. Respondent makes said purchases of hosiery wherever he can secure the most advantageous price.

The prices as printed on said order blanks are wholly fictitious, without any basis in fact, and cause purchasers to believe that the prices indicated on said order blanks are the regular prices for said hosiery. The respondent represents that the prices indicated on the order blanks are the regular retail prices for the hosiery, and he accepts orders for hosiery at prices ranging from one-third to one-half of the prices so indicated on said order blanks, leading purchasers to believe that they are purchasing hosiery of the qualities or grades indicated at a substantial reduction from the regular prices.

PAR. 8. Respondent's acts and practices as above set out have the capacity and tendency to and do mislead and deceive prospective purchasers of hosiery into the erroneous belief that said false and fraudulent representations are true and that the respondent will do and perform the false and fraudulent promises made; and have the capacity and tendency to and do cause a substantial number of prospective purchasers of hosiery to purchase respondent's said hosiery in lieu and instead of the hosiery of his competitors, which hosiery such prospective purchasers would purchase but for the acts and practices of the respondent, thereby substantially diverting trade to the respondent from his competitors, to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, under the conditions and circumstances set out 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 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 Commission upon the complaint filed herein on July 3, 1935, the testimony and evidence in support of the charges of said complaint and the brief filed by counsel for the Commission, no answer or brief having been filed by the respondent and oral argument having been waived, 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 ordered, That the respondent T. S. Craig, trading as the United Silk Company, his agents, servants, and employees, in connection with offering for sale and selling hosiery in commerce among the several States of the United States, forthwith cease and desist from:

1. Filling orders with hosiery different from the size, or color, or quality ordered;

2. Accepting all or any part of the purchase price for hosiery when hosiery of the size, color, and quality or grade ordered is not delivered to the purchaser at the time promised;

3. Representing, directly or indirectly, to purchasers of hosiery that a free pair will be shipped with an order, unless and until a free pair is shipped with such order without added cost to the purchaser;

4. Representing, directly or indirectly, to purchasers that a certain number of pairs of hosiery will wear for a specified period of time and that, if they do not, the worn hosiery will be replaced with new hosiery until the expiration of the period of time specified, unless and until said hosiery will, under normal wear, last for the period of time specified; or if such hosiery does not wear for the period of time specified, until and unless respondent replaces such worn hosiery with new hosiery for the time specified.

5. Representing, by the use of purported mill numbers and a description of the hosiery designated by the mill numbers, or otherwise, that respondent has the hosiery offered for sale in stock and available for delivery, when such is not the fact;

6. Using the term "Dallas office", or other words of similar import and meaning, on order blanks, unless and until respondent actually maintains an office for the transaction of business in the city of Dallas, State of Texas;

7. Representing, directly or indirectly, through fictitious price marking on order blanks, or otherwise, that the price at which hosiery

Order

23 F. T. C.

is offered is less than the usual and customary retail price for said hosiery, when such is not the fact.

It is further ordered, That the respondent T. S. Craig, trading as the United Silk Company, shall, within 60 days after service upon him of a copy of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

ANGELO CATALDO, INDIVIDUALLY AND TRADING AS
LIBERTY CHOCOLATE COMPANY AND AS ARCADIA
CHOCOLATE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2691. Complaint, Jan. 27, 1936—Decision, Sept. 1, 1936¹*

Where an individual engaged in manufacture and sale of candy, including two assortments, in one of which chance selection of one of individually wrapped penny pieces of uniform size, shape, and quality, differing in color from that of majority, entitled purchaser to one of larger pieces included, and in other of which chance selection of one of a small number of white-striped pieces included in assortment of individually wrapped penny pieces of uniform size, etc., entitled purchaser, without charge, to larger piece as prize, while purchaser of last piece in said assortments was respectively entitled, without charge, to box of candy or one of larger pieces included—
Sold said assortments, with explanatory display card, to wholesale and retail dealers for display and sale to purchasing public in accordance with aforesaid or similar plans and thereby supplied to and placed in hands of others means of thus conducting lotteries in sale of its products, as means of inducing purchase of its products in preference to candy offered and sold by competitors, in violation of public policy, long existing in common law and criminal statutes and of the established public policy of the United States Government;

With dangerous tendency unduly to hinder competition or to create monopoly in tendency and capacity of practice to exclude from branch of candy trade involved competitors who did not adopt and use such or equivalent or similar method, and with effect of inducing many dealers in and ultimate purchasers of candy, by reason of their attraction by element of chance involved in sale thereof, to buy its said product, so packed and sold, in preference to that offered and sold by competitors, many of whom are unwilling to offer and sell candy so packed and assembled or otherwise arranged and packed for sale to purchasing public as to involve a game of chance or other method contrary to public policy, and who refrain from so doing; and

With tendency and capacity to divert to him trade and custom from competitors who do not use same or equivalent methods, to exclude from said trade all competitors unwilling to and who do not use such method as unlawful, and to lessen competition in said trade and to tend to create a monopoly thereof in him and such other candy distributors as use such a method, and deprive purchasing public of benefits of free competition therein, and eliminate from trade involved all actual competitors and exclude therefrom all potential competitors who do not adopt and use such or an equivalent method:

¹ Order published, as modified, as of Nov. 4, 1936.