

IN THE MATTER OF

I. B. KLEINERT RUBBER COMPANY

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

Docket 2852. Complaint, June 26, 1936—Decision, Apr. 24, 1937

Where a corporation engaged in the manufacture of various types of water-proof garments for women and children, including baby pants sold under trade name "SOFTEX," and in sale thereof in competition with others engaged in sale of similar products or products for same and similar purposes who truthfully represented the same—

Caused representations and statements to be made in advertising matter circulated and distributed in the various States, to the effect that its said products were absolutely free from latex or any other form of gum rubber and were rubberless, facts being they were not thus free or rubberless, but contained rubber in waist bands and in leg openings;

With tendency to deceive and mislead substantial portions of purchasing public into erroneous belief that such representations were true, and with the result, as a direct consequence of such mistaken and erroneous beliefs thus induced, that consuming public was persuaded to purchase substantial volume of its products, and trade was unfairly diverted to it from competitors engaged in selling products of same kind and nature in commerce and who truthfully advertised and represented the character and quality thereof, and means of deceiving consuming public was also placed in the hands of the retail purchaser by it in the labeling of its products as aforesaid; to the substantial injury of competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Robert S. Hall* and *Mr. John J. Keenan*, trial examiners.

Mr. John Darsey for the Commission.

Nordlinger, Riegelman & Cooper, of New York City, for respondent.

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 I. B. Kleinert Rubber Company, hereinafter referred to as respondent, has been and is now 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:

1080

Complaint

PARAGRAPH 1. 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 place of business located at 485 Fifth Avenue, in the city of New York, in said State. It is now, and for some time past has been, engaged in the manufacture of various types of waterproof garments for women and children, among which said products is a baby pant, which it offers for sale and sells under the trade mark "Softex," which products the respondent sells and has sold and distributed in commerce between and among the various States of the United States, causing the same when sold to be shipped from its place of business in the State of New York to purchasers thereof located in a State or States other than the State of New York.

In the course and conduct of its business the respondent has been and is in substantial competition with various other corporations, partnerships, firms, and individuals engaged in the sale of similar products or products to be used for the same and similar purposes, which competitors cause their products when sold to be transported to purchasers thereof located in the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1, supra, the respondent causes its aforesaid products to be advertised by means of trade publications and in newspapers having circulation in the various States of the United States. It distributes circulars and leaflets pertaining to said products in and among the various States of the United States. It also furnishes mats and display cards for the use of, and which are used by, the trade located in the various States of the United States in advertising and selling the said products. In the course of offering for sale and sale of the baby pant under the trade mark "Softex" the respondent causes representations and statements to be made in such advertisements and advertising matter to the following effect, gist, or meaning:

But they are absolutely free from Latex or any other form of gum rubber. They're rubberless,

and which products so advertised and represented the respondent sells in commerce between and among the various States of the United States, as aforesaid; when in truth and in fact said products have a waistband of an elastic fabric made from gum rubber, and also an elastic banding at the leg opening made of rubber, and therefore said products are not properly and correctly represented and referred to as "being absolutely free from Latex or any other form of gum rubber" or as "rubberless."

Findings

24 F. T. C.

PAR. 3. Under the foregoing facts and circumstances, the representations, statements, and terms used by respondent in its advertising matter, as set forth in paragraph 2 supra, are false and misleading and have the capacity and tendency to deceive and do deceive the ultimate purchasers and consumers into buying that which they do not intend to buy; and through and by virtue of the use of such representations, statements, and terms in its advertising matter, as aforesaid, the respondent has placed and is placing in the hands of its wholesaler and retailer purchasers the means of deceiving the ultimate purchasers and consumers. The aforesaid practices have the capacity and tendency to divert to respondent the trade of competitors engaged in selling in commerce between and among the various States of the United States products of the same kind and nature as those of respondent, which products are truthfully advertised and described, and thereby substantial injury is done by respondent to substantial competition in commerce between and among the various States of the United States.

PAR. 4. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent 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.

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 June 26, 1936, issued and served its complaint in this proceeding upon respondent, I. B. Kleinert Rubber Company, a corporation, 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, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, before Robert S. Hall and John J. Keenan, examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Harold Riegelman, attorney for the respondent; and said testimony and other 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, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in defense thereto; and the Commission having duly considered the same, and being now 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. I. B. Kleinert Rubber Company is a New York corporation with its principal place of business located at 485 Fifth Avenue in the city of New York in said State. It is engaged in the manufacture of various types of waterproof garments for women and children, among which products is a baby pant which sells under the trade name, "SOFTEX." When its products are sold, the respondent causes the same to be shipped from its place of business in the State of New York to purchasers thereof located in the various States of the United States.

There are other corporations, partnerships, firms, and individuals engaged in the sale of similar products, or products to be used for the same and similar purposes, who truthfully represent their products and who cause the same when sold to be transported from their respective places of business to purchasers thereof located in the various other States of the United States, and with such corporations, partnerships, firms, and individuals the respondent is in competition.

PAR. 2. In connection with the promotion of sale and sale of its products as aforesaid, the respondent causes representations and statements to be made in advertising matter which is circulated and distributed in the various States of the United States to the effect that its products are absolutely free from latex or any other form of gum rubber and that they are rubberless.

The products offered for sale and sold by respondent in the manner set forth above are not absolutely free from latex or any other form of gum rubber and are not rubberless. The products contain rubber in the waist bands and in the leg openings.

PAR. 3. The representations and statements made by respondent to the effect and meaning of those set forth in paragraph 2 supra are calculated to and have the tendency to deceive and mislead substantial portions of the purchasing public into the erroneous belief that such representations are true. As a direct consequence of such mistaken and erroneous beliefs so induced, the consuming public is persuaded to purchase a substantial volume of respondent's products with the attendant result that trade is unfairly diverted to respondent from

Order

24 F. T. C.

competitors engaged in selling products of the same kind and nature in commerce as hereinbefore set out, who truthfully advertise and represent the character and quality of their products. A means of deceiving the consuming public is also placed in the hands of the retailer-purchaser by respondent when its products are so labeled. Substantial injury is thereby done by respondent to competition in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondent I. B. Kleinert Rubber Company are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning 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 Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before Robert S. Hall and John J. Keenan, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs filed herein; 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 ordered, That the respondent, I. B. Kleinert Rubber Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of its baby pant products in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

That said products are free from latex or any other form of gum rubber or that they are rubberless when said products have latex or some form of rubber in said products at waist or leg bands or openings or in any other capacity.

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

Complaint

IN THE MATTER OF

RUSSEK'S FIFTH AVENUE, INC.

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

Docket 3066. Complaint, Feb. 25, 1937—Decision, Apr. 24, 1937

Where a corporation engaged as retailer of women's wares, such as furs, coats, dresses, and other items of wearing apparel, in shipping from its place of business to the purchasers thereof in other States articles of merchandise sold by it—

Made use of words "silk" or "satin" in soliciting sale of its products to purchasers in various States, through advertisements and advertising matter in newspapers circulating among the various States, through representing, designating, and referring to products thus offered as "satin and silk jersey dresses" or as "silk afternoon dresses," as case might be, notwithstanding fact dresses respectively thus described were not composed of silk, product of the cocoon of the silk worm, as long specifically and definitely understood in mind of purchasing public from words "silk" or "satin," as long associated in said mind with the long and highly esteemed silk fabrics, and preeminent quality thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and to cause them to buy such dresses on account of such erroneous belief, and to unfairly divert trade to it from competitors engaged in the sale of dresses and other women's wearing apparel, who do not misrepresent the kind of dresses offered, but truthfully advertise and represent the nature and kind thereof; to the substantial injury of competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Astor Hogg for the Commission.

Weisman, Quinn, Allen & Spett, of New York City, for respondent.

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 Russek's Fifth Avenue, Inc., a corporation, 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 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: