

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:

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PARAGRAPH 1. Respondent, Russek's Fifth Avenue, Inc., 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 located on 5th Avenue at 36th Street, in the city of New York in said State.

Respondent is now, and has been for several years last past, engaged in business as a retailer of women's wear, such as furs, coats, dresses, and other items of wearing apparel. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in various States of the United States, and in the District of Columbia. Respondent now causes, and during the time herein mentioned has caused, its articles of merchandise, when sold, to be shipped from its place of business in New York City to the purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by the respondent in said articles of merchandise between and among the various States of the United States, and in the District of Columbia.

Respondent is now and at all times herein mentioned has been in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of women's wearing apparel, including furs, coats, and dresses in commerce among the various States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the respondent, in soliciting the sale of and selling its products to purchasers located in the various States of the United States, caused advertisements and advertising matter to be inserted in newspapers having circulation in and among the various States of the United States, wherein certain of its dresses were represented, designated, and referred to as "satin and silk jersey dresses," while certain other dresses were represented, designated and referred to as "silk afternoon dresses." Such statements and representations served as representations on the part of respondent that such dresses, so advertised and offered for sale, were silk dresses.

The representations hereinbefore set forth, are grossly false and misleading in that said dresses so represented, designated and referred to as being silk and satin silk are not and were not composed of silk, the product of the coon of the silkworm, but were composed of a material, or materials, other than silk.

PAR. 3. The word "silk" for many years past, has had and still has, in the minds of the consuming public, a definite and specific

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meaning, to wit, the product of the cocoon of the silkworm. Silk fabrics for many years have held, and still hold great public esteem and confidence for their preeminent qualities. Silk fibre has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from different types of weaving. The term "satin" has been for a long time, and at the present time still is associated in the public mind with a fabric made from the cocoon of the silkworm, commonly known and understood by the public as silk.

PAR. 4. The use by respondent of the representations set forth herein has had and now has the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such representations are true, and to cause them to purchase such dresses on account of such erroneous belief engendered as above set forth. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, individuals, partnerships and firms engaged in the sale of dresses and other women's wearing apparel who do not misrepresent the kind of dresses offered for sale, but who likewise advertise, sell and distribute their dresses among the various States of the United States and in the District of Columbia. By the representations aforesaid trade is unfairly diverted to respondent from such competitors, and thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 5. The above alleged acts and practices of respondent are all to the injury and 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 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 February 25, 1937, issued and served its complaint in this proceeding upon respondent Russek's Fifth Avenue, 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 and the filing of respondent's answer thereto, the attorneys of record for said respondent tendered and

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entered into a stipulation as to the facts with the Chief Counsel for the Commission, subject to the approval of the Commission, by which it is agreed that the statement of facts therein contained may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto; and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; which said stipulation has been approved by the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, and the said stipulation and statement of facts, 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. Respondent, Russek's Fifth Avenue, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York with its principal office and place of business located on Fifth Avenue at 36th Street in the city of New York in said State. Respondent is, and has been for several years last past, engaged in business as a retailer of women's wares such as furs, coats, dresses, and other items of wearing apparel. It sells and distributes such articles of merchandise to members of the purchasing public located in the various States of the United States. It causes, and has caused, its articles of merchandise when sold to be shipped from its place of business in New York City to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by the respondent in said articles of merchandise between and among the various States of the United States. Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of women's apparel, including furs, coats, and dresses in commerce among and between the various States of the United States.

PAR. 2. Respondent in soliciting the sale of and selling its products to purchasers located in the various States of the United States,

caused advertisements and advertising matter to be inserted in newspapers having circulation in and among the various States of the United States, wherein certain of its dresses were represented, designated, and referred to as "satin and silk jersey dresses," while certain other dresses were represented, designated, and referred to as "silk afternoon dresses." In and by such representations and statements, respondent represented that such dresses so advertised and offered for sale were silk dresses. Such statements and representations thus made are and were false and misleading in that said dresses so represented as being "silk" and "satin and silk" are not and were not composed of silk, the product of the cocoon of the silk worm but were composed of materials other than silk.

PAR. 3. The word "silk" for many years last past has had and still has in the minds of the purchasing public a definite and specific meaning, to wit: the product of the cocoon of the silk worm. Silk fabrics for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fibre has long been woven into a variety of fabrics, and a variety of distinctive terms have been applied to the fabrics resulting from different types of weaving. The term "satin" has been for a long time, and at the present time is associated in the public mind with a fabric made from the cocoon of the silk worm, commonly known and understood by the public as "silky."

PAR. 4. The use by the respondent of the representations set forth herein have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true and to cause them to purchase such dresses on account of such erroneous belief brought about as above set forth. There are among the competitors of the respondent as mentioned in paragraph 1 hereof, corporations, individuals, partnerships, and firms engaged in the sale of dresses and other women's wearing apparel, who do not misrepresent the kind of dresses offered for sale, but who truthfully advertise and represent the nature and kind of dresses sold by them. The representations made by respondent as aforesaid, have the capacity and tendency to unfairly divert trade to respondent from such competitors; thereby substantial injury is being done and has been done by the respondent to competition in commerce as herein set out.

CONCLUSION

The aforesaid acts and practices of the respondent, Russek's Fifth Avenue, Inc., are to the prejudice of the public and of respondent's

competitors, and constitute unfair methods of competition in commerce, within 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 the respondent and the agreed stipulation of facts entered into between the respondent herein, Russek's Fifth Avenue, Inc., and W. T. Kelley, Chief Counsel for the Commission, which provides among other things that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein, findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and 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 Russek's Fifth Avenue, Inc., its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of its merchandise, dress goods and garments in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Using the word "silk" either alone or in conjunction with any word or words to describe or refer to the fabric of merchandise, dress goods, or garments not composed entirely of silk, the product of the cocoon of the silk worm.

(2) From using the word "satin" either alone or in conjunction with any other word or words to describe or refer to the fabric merchandise, dress goods, or garments not made wholly from silk, the product of the cocoon of the silk worm.

It is further ordered, That the respondent, Russek's Fifth Avenue, Inc., shall within 30 days after service upon it of a copy 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

NOLAN ATZ, GUSTA ATZ AND JOHN EDWARD ATZ, TRADING AS ATZ'S HATCHERY, ATZ'S BLUE MOUNT HATCHERY AND ATZ'S MAMMOTH HATCHERY

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

Docket 2886. Complaint, Aug. 3, 1936—Decision, Apr. 27, 1937

Where an individual engaged in the hatching, advertisement, sale and shipment of baby chicks by mail and express to purchasers in various States, in substantial competition with others similarly engaged; in advertising her said baby chicks in periodicals of national circulation and among farmers, more particularly—

- (a) Represented that same were hatched from the eggs of hens or old hens, and not pullets, through such statements as "Superior grade from old hens' eggs," "from all old hens' eggs," facts being not more than ten percent of the flocks from which she purchased eggs, gathered by trucks from the various farmers and poultry raisers for hatching and sale of chicks were composed entirely of old hens, and there was no practical way for a large hatchery to obtain or definitely select and separate the old hens' eggs, chicks from which, as meaning hens that have completed one or more laying seasons, are preferred by many purchasers as more likely to live than those from eggs of a young hen or pullet;
- (b) Represented that the eggs from which her said chicks were hatched had been "blood tested" for either eleven or twelve consecutive years, facts being that, while individual in question did make annual tests of the flocks from which she bought eggs for hatching, such testing did not and could not make any flock 100% free from the diseases or blood tested at the various times at which the eggs were obtained for hatching; and
- (c) Represented that she had at all times had chickens of various breeds or types available for immediate delivery, facts being she did not at all times have ample supply of various breeds and types, as represented, available for such delivery, and at times made substitutions of different breed or type from those specifically ordered, without obtaining purchaser's consent, or failed to make shipment or notify purchasers promptly of her inability to fill order or return money forwarded therewith, or failed to make shipment within time specified or a reasonable time thereafter or to notify purchasers of such unreasonable delay;

With result that purchasers were misled and injured by such misrepresentations and practices as respects such matters of major importance to purchaser as time of delivery and delivery of kind ordered, and a substantial portion of the purchasing public were misled and deceived into the erroneous belief that the said representations, as above set forth, were true, and, acting thereon, were induced to order and buy her said products, and trade was diverted to her from those of her competitors who do not misrepresent their products or engage in such practices; to the substantial injury of competitors in commerce and of the public: