

Complaint

IN THE MATTER OF
OPPENHEIM, COLLINS AND COMPANY, INC.

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

Docket 3160. Complaint, June 23, 1937—Decision, Aug. 21, 1937

Where a corporation engaged in the operation of large department stores and in the sale therefrom, among other things, of women's wearing apparel, and in shipping its articles of merchandise, when sold, from its places of business to purchasers in the various other States; in advertising in newspapers of interstate circulation soliciting sale of its said apparel—Represented evening wraps for women as "silk crepe," and other items of women's wearing apparel as "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," and "dark satins sprinkled with white dots," and thereby represented as silk products such items of wearing apparel to members of purchasing public, notwithstanding fact products in question were not composed of silk, product of the cocoon of the silk worm, as long definitely understood in mind of consuming public, and were not silk products, long held in great public esteem and confidence for their preeminent qualities, and associated in the public mind with such terms as "silk crepe," "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," "satins," and "dark satins," as used to designate, describe and refer to dress goods and other items of women's wearing apparel; With capacity and tendency to mislead and deceive substantial portion of purchasing public into the erroneous beliefs that such representations were true, and to cause them to buy such items of apparel as a result of such erroneous beliefs, engendered as above set forth, and with result that trade was unfairly diverted thereby to it from competitors engaged in sale of women's wearing apparel who do not misrepresent the kind of apparel offered for sale by them; 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.

Mr. Astor Hogg for the Commission.

Chadbourne, Wallace, Parke & Whiteside, 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 Oppenheim, Collins and Company, Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing

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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. Respondent, Oppenheim, Collins and Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 33 West 34th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in the business of operating large department stores from which it sells, among other things, women's wearing apparel. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in the various States of the United States and in the District of Columbia. Respondent causes, and during the time herein mentioned has caused, its articles of merchandise, when sold, to be shipped from its places of business in New York, N. Y., 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 said respondent in said merchandise so sold by it 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 persons, firms, and partnerships engaged in the sale and distribution of women's wearing apparel and other allied products in commerce between and 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, respondent, in soliciting the sale of and selling said wearing apparel, caused, and now causes, advertising matter to be inserted in newspapers having interstate circulation. In said advertising matter evening wraps for women were, and are, represented, designated, and referred to as "silk crepe." In such advertising matter other items of women's wearing apparel were represented designated, and referred to as "Made in quality silks," "Taffeta," "crepe," "luxurious silks," "Sale! silk lingerie," "dark satins sprinkled with white dots."

Such statements and representations on the part of respondent serve as representations to members of the public that such items of wearing apparel so advertised and offered for sale were silk products. The representations hereinabove set forth are and were grossly false and misleading in that said items of wearing apparel so represented, designated and referred to 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 past has had, and still has, in the mind of the consuming public, a definite and specific meaning, to wit: The product of the cocoon of the silk worm. Silk products 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. A variety of distinctive terms have been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of women's wearing apparel designated, described and referred to as "silk crepe," "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," "satins," "dark satins" have been for a long time and at the present time still are associated in the public mind with a fabric made from the cocoon of the silk worm, commonly known and understood by the public as silk.

PAR. 4. The use by respondent of the representations set forth herein have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that such representations are and were true and to cause them to purchase such items of wearing apparel on account of such erroneous beliefs 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 women's wearing apparel who do not misrepresent the kind of wearing apparel offered for sale. By use of the representations aforesaid, trade has been, and is unfairly diverted to respondent from said 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 the 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

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Federal Trade Commission, on June 23, 1937, issued, and on June 24, 1937, served, its complaint in this proceeding upon respondent, Oppenheim, Collins and Company, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer 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. Respondent, Oppenheim, Collins and Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 33 West 34th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in the business of operating large department stores from which it sells, among other things, women's wearing apparel. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in the various States of the United States and in the District of Columbia. Respondent causes, and during the time herein mentioned has caused, its articles of merchandise, when sold, to be shipped from its places of business in New York, N. Y., 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 said respondent in said merchandise so sold by it 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 persons, firms and partnerships engaged in the sale and distribution of women's wearing apparel and other allied products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In soliciting the sale of and selling its wearing apparel, as described in paragraph 1 hereof, respondent caused, and now causes, advertising matter to be inserted in newspapers having an interstate circulation, in and by which advertising matter evening wraps for women were, and are, represented, designated, and referred to as "silk crepe." In such advertising matter other items of women's wearing apparel were, and are, represented, designated, and referred to as "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," "dark satins sprinkled with white dots."

By the means and in the manner aforesaid, respondent represented, and represents, to members of the purchasing public that such items of wearing apparel were, and are, silk products. The representations thus made by respondent are and were grossly false and misleading in that said items of wearing apparel so represented, designated, and referred to 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 past has had, and still has, in the mind of the consuming public a definite and specific meaning, to wit: the product of the cocoon of the silk worm. Silk products 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. A variety of distinctive terms have been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of women's wearing apparel designated, described and referred to as "silk crepe," "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," "satins," "dark satins" have been for a long time and at the present time still are associated in the public mind with a fabric made from the cocoon of the silk worm, commonly known and understood by the public as silk.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, individuals, partnerships, and firms engaged in the sale of women's wearing apparel who do not misrepresent the kind of wearing apparel offered for sale.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that such representations are and were true and to cause them to purchase such items of wearing apparel as a result of such erroneous beliefs engendered as above set forth. By use of the representations aforesaid, trade has been and is unfairly diverted

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to respondent from said competitors and thereby substantial injury is being and has been done by respondent to competition in said commerce, as herein set out.

CONCLUSION

The aforesaid acts and practices of the respondent, Oppenheim, Collins and Company, Inc., 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 and the answer filed herein on August 18, 1937, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, 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, Oppenheim, Collins and Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of wearing apparel in interstate commerce or in the District of Columbia, do forthwith cease and desist from using the words "silk," "crepe," "taffeta," or "satin," as descriptive of products which are not composed of silk, the product of the cocoon of the silk worm, but which are composed of a material or materials other than silk.

It is further ordered, That the respondent shall, within 30 days after 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.

Syllabus

IN THE MATTER OF

F. W. WASHBURN CANDY CORPORATION

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

Docket 3163. Complaint, June 29, 1937—Decision, Aug. 21, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments of candies which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to ultimate consumer thereof, and which were composed of a number of individually wrapped penny pieces, together with number of articles of merchandise to be given as prizes to chance purchasers of a relatively few of aforesaid uniform individually wrapped pieces, concealed colored centers of which differed from those of the majority, and entitled, as aforesaid, said chance purchasers and purchaser of last piece in assortment to one of said articles of merchandise as a prize—

Sold, to wholesalers and jobbers, and to retail dealers for display and resale to purchasing public in accordance with said sales plan, such assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said products, in accordance with such plan, contrary to public policy long recognized by the common law and criminal statutes and contrary to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public, so as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said products in preference to candy offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said product and by element of chance involved in sale thereof as above set forth, and were thereby induced to buy its said candy, so packed and sold by it, in preference to that offered and sold by its said competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to it trade and custom from its said competitors who do not use such or equivalent method, exclude from said candy trade all competitors who are unwilling to and do not use any such method as unlawful, lessen competition in said trade and tend to create a monopoly thereof in it and in such other competitors as do use such or an equivalent method, deprive purchasing public of benefit of free competition in said trade, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Mr. Henry C. Lank and Mr. P. C. Kolinski for the Commission.