

Complaint

IN THE MATTER OF

MUTUAL ROSENBLUM CORPORATION

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

Docket 3153. Complaint, June 15, 1937—Decision, Sept. 4, 1937

Where a corporation engaged in manufacture of garments, including ladies' dresses, and in sale and distribution thereof in commerce among the various States and in the District of Columbia, in substantial competition with others similarly engaged—

Made use of terms "Silk Jersey," "Satin Jersey," and "Silk Jersanese," in describing certain dresses offered and sold by it in advertising and circular matter furnished and distributed to its various customers and prospective customers, notwithstanding fact dresses thus advertised and represented by it were not, in fact, made from material composed of silk, product of the cocoon of the silk worm, as understood from terms aforesaid by trade and purchasing public;

With effect of misleading and deceiving purchasers, and of causing them erroneously to believe that its said dresses were made from materials composed of silk, product of cocoon of silk worm, and, because of said erroneous belief, to purchase same, thereby unfairly diverting substantial trade in said commerce to it from its competitors who truthfully represent their products; to their injury and that of public:

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

Mr. William L. Pencke for the Commission.

Watterson & Whyman, 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 Mutual Rosenbloom Corporation, 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. Respondent, Mutual Rosenbloom Corporation, 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 at 498 Seventh Avenue, in the city of New York, State of New

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York. Said respondent is now, and for a number of years last past has been, engaged in manufacturing garments including ladies' dresses, and in the sale and distribution thereof in commerce between and among the various States of the United States and the District of Columbia. It causes said products, 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 of the United States other than the State of New York.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now, and for a number of years last past has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the sale and shipment of similar products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, the respondent, in connection with the sale and distribution of its said products, furnishes and distributes to its various customers and prospective customers located in the various States of the United States and the District of Columbia, advertising and circular matter wherein certain dresses offered for sale and sold by the said respondent were and are described variously as "Silk Jersey" or "Satin Jersey." Many of its said customers located in States other than the State of New York have mailed in to its office orders for "Satin Jersey," "Silk Jersey," and "Silk Jersanese" dresses. Such orders were, and are, being filled by said respondent with dresses advertised and sold by it. An example of the circulars being distributed by the respondent as aforesaid contains among other advertising matter the following:

Mutual-Rosenbloom's Sculptured Jersanese Frock

Smart New Yorkers Have Gone Wild About It. Harper's Bazaar and Vogue both stress this new sculptural quality. The Grecian moulded lines that show every curve of the figure beneath. And it is unquestionably one of the most important fashion trends in seasons. Noteworthy, too, because it's in supple black silk Jersey—favored fabric of the great Alix. You can't do better than to adopt this dress at once. In sizes 10 to 18.

PAR. 4. In truth and in fact, said statements and representations made by said respondent, as described in paragraph 3, are false and misleading in that the said material from which said dresses are manufactured is not composed of silk, the product of the cocoon of the silkworm, but is composed of material other than silk. The said customers of said respondent were and are being led to believe by the respondent that they had been and are receiving mer-

chandise manufactured of silk in accordance with the specifications of their said orders, when in fact the merchandise they received was manufactured from material other than silk.

PAR. 5. The said representations and practices as described hereinabove have the capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous beliefs that the dresses manufactured by respondent and described by it as herein set forth are manufactured of silk, and that when they order dresses from the respondent specifying that said dresses be manufactured of silk jersey they receive dresses so manufactured, and are led into the purchase of respondent's dresses on account of such erroneous beliefs induced as aforesaid. As a result of the aforesaid false and misleading statements, representations and practices by the respondent with respect to its product, trade has been unfairly diverted to it from its said competitors who do not falsely represent the quality of their respective products and whose ability to compete successfully with respondent has been, and is, lessened. Injury has been done by respondent to substantial competition in commerce among and between the several States of the United States.

PAR. 6. The above acts and things done, or caused to be done, by the respondent, were and are each and all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 15, 1937, issued, and on June 16, 1937, served its complaint in this proceeding upon respondent, Mutual Rosenbloom Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 12, 1937, the respondent filed its answer, in which answer it admitted all the material allegations of the complaint to be true and stated that it waived hearing on the charges set forth in the said complaint and that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the com-

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plaint. 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, Mutual Rosenbloom Corporation, 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 at 498 Seventh Avenue, in the city of New York, State of New York. Said respondent is now, and for a number of years last past has been, engaged in manufacturing garments, including ladies' dresses, and in the sale and distribution thereof in commerce between and among the various States of the United States and the District of Columbia. It causes said products, 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 of the United States other than the State of New York.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now, and for a number of years last past has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the sale and shipment of similar products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, the respondent, in connection with the sale and distribution of its said products, furnishes and distributes to its various customers and prospective customers located in the various States of the United States and the District of Columbia, advertising and circular matter wherein certain dresses offered for sale and sold by the said respondent were and are described variously as "Silk Jersey" or "Satin Jersey." Many of its said customers located in States other than the State of New York have mailed in to its office orders for "Satin Jersey," "Silk Jersey," and "Silk Jersanese" dresses. One of the circulars distributed by the respondent contains, among others, the following statement:

Mutual-Rosenbloom's Sculptured Jersanese Frock.

Smart New Yorkers Have Gone Wild About It. Harper's Bazaar and Vogue both stress this new sculptural quality. The Grecian moulded lines that show every curve of the figure beneath. And it is unquestionably one of the most important fashion trends in seasons. Noteworthy, too, because it's in supple black

silk jersey—favored fabric of the great Alix. You can't do better than to adopt this dress at once. In sizes 10 to 18.

PAR. 4. The terms "Satin Jersey," "Silk Jersey," and "Silk Jersanese" are understood by the trade and purchasing public to mean and describe a material made from silk, the product of the cocoon of the silk worm, and respondent's use of these terms as above set out caused its customers to believe that the dresses advertised were made from materials composed of silk, the product of the cocoon of the silk worm.

The dresses so advertised and represented by the respondent were in fact not made from a material composed of silk, the product of the cocoon of the silk worm, but are made from a material other than silk. Orders received by the respondent for "Satin Jersey," "Silk Jersey," and "Silk Jersanese" were and are being filled with dresses which are not made from materials composed of silk, the product of the cocoon of the silk worm.

Respondent discontinued the practice of describing dresses not made from materials composed of silk, the product of the cocoon of the silk worm, as "Satin Jersey," "Silk Jersey," and "Silk Jersanese," prior to the issuance of complaint herein.

PAR. 5. The acts and practices of the respondent as hereinabove set out had the capacity and tendency to, and did, mislead and deceive purchasers, and to cause them erroneously to believe that respondent's said dresses are made from materials composed of silk, the product of the cocoon of the silk worm, and, because of said erroneous belief, to purchase respondent's said dresses, thereby unfairly diverting substantial trade in said commerce to the respondent from its competitors, who truthfully represent their products, to the injury of its competitors and the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Mutual Rosenbloom Corporation, 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 July 12, 1937, by respondent admitting all the material allega-

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tions 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 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, Mutual Rosenbloom Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of dresses and garments in interstate commerce or in the District of Columbia, do forthwith cease and desist:

Using the terms "Silk Jersey," "Satin Jersey," or "Silk Jersanese," or the word "Silk" alone or in connection with any other word or words, to designate and describe dresses and garments made from a material not composed entirely of silk, the product of the cocoon of the silk worm.

It is further ordered, That the respondent shall within 60 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

COVERED BUTTON AND BUCKLE CREATORS, INC., ET AL.

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

Docket 3186. Complaint, July 24, 1937—Decision, Sept. 4, 1937

Where a membership non-profit corporation, members of which were engaged in manufacture of covered buttons, buckles, and novelties for use in manufacture of wearing apparel, and in sale thereof to dress manufacturers and those engaged in kindred industries, making and selling approximately ninety percent of all such products made in the United States, and, prior to acts and things hereinbelow set forth, in competition as to price with one another in sale of said products between and among the various States and territories and the District of Columbia; and the officers, directors, and members of aforesaid corporation, for the purpose of eliminating price competition among themselves—

Entered into and carried out an agreement, combination, understanding and conspiracy among themselves to fix and maintain, and did fix and maintain thereby, uniform minimum prices for the sale of covered buttons, buckles, and novelties and maximum discounts to be allowed by said members to their purchasers of said products, and prices thereof entering into interstate commerce; and pursuant to and for the purpose of carrying out aforesaid agreement, combination, understandings, and conspiracy—

- (a) Fixed and maintained, by agreement among themselves, (1) uniform minimum prices for sale of said products sold by them and each of them, and (2) uniform maximum discounts for said products thus sold;
- (b) Inserted in a trade paper of wide circulation among those engaged in dress manufacturing and kindred industries a "notice" to such manufacturers and industries to the effect that, on and after date therein named, "a uniform policy of dealing with customers" would be adhered to "by manufacturers pursuant to the fair trade practice rules recently approved by the Federal Trade Commission for the covered button and buckle manufacturing industry," and that "rules" in said notice set forth would be "strictly enforced";
- (c) Sent to manufacturers and industries in question copy of said notice and advertisement; and
- (d) Falsely stated, represented, and implied, thereby and otherwise, that Commission had approved rules for industry in question (1) regulating prices for products in question or authorizing the fixing thereof, (2) prohibiting, without qualification, sale of said products below cost and approving or authorizing so-called basic cost formula, (3) prohibiting the granting or allowing of price differentials, rebates, etc., to evade so-called established basic cost prices, (4) approving the fixing or authorizing as set forth in said notice, of maximum uniform discount, and (5) forbidding the giving of free samples or free duplicates, and that uniform policy set forth in said notice was initiated and carried out