

Complaint

IN THE MATTER OF
AL HARTMAN, INC.

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

Docket 3241. Complaint, Oct. 9, 1937—Decision, Nov. 6, 1937

Where a corporation engaged in manufacture of dresses and sale and distribution thereof to retail dealers and other customers in the various States and in the District of Columbia, in substantial competition with others engaged in such sale and distribution of dresses; in advertising the same in newspapers of interstate circulation—

- (a) Represented, designated and referred thereto as "Indo China Washable Crepe Prints"; and
- (b) Set forth on tags attached to dresses thus advertised, offered and sold, language stating that "Owing to the peculiar delicacy of all silk weaves, manufacturers will not guarantee them as flawless," etc., and that "There are certain characteristics appearing in the weave of all silks that should not be considered as imperfections," etc.;

Notwithstanding fact dresses thus advertised and offered were not composed of silk, product of cocoon of silk worm, as long definitely understood in mind of retail dealers and consuming public from word "silk," products of which have long held, and still hold, great public esteem and confidence for their preeminent qualities, and as understood from word "crepe" without descriptive qualification, as applied to dress goods and other items of wearing apparel, as meaning one of terms applied to fabrics resulting from different types of weaving silk fiber, and fabric made from cocoon of silk worm, and as commonly known and understood by public generally, "silk";

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such dresses were made of silk, and to cause them to purchase said dresses by reason of such erroneous beliefs, thus engendered, and to divert trade unfairly to it from competitors engaged in manufacture and sale of silk dresses who do not misrepresent the kind of dresses made and 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.

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 Al Hartman, Inc., a corporation, hereinafter referred to as respondent, has

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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, Al Hartman, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1400 Broadway 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 manufacturing dresses. It sells, and has sold and distributed, such dresses to retail dealers and other customers located in the various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said dresses, 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 said respondent in said dresses, 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 dresses 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 herein, respondent, in soliciting the sale of and selling certain of its dresses, caused, and causes, advertisements and advertising matter to be inserted in newspapers having an interstate circulation. In said advertisements, such dresses offered for sale and sold by respondent were represented, designated and referred to as "Indo China Washable Crepe Prints." The dresses so advertised and offered for sale, and sold, had, and have, attached thereto tags bearing the following language:

Owing to the peculiar delicacy of all silk weaves, manufacturers will not guarantee them as flawless, or against perspiration, slipping or roughing. There are certain characteristics appearing in the weave of all silks that should not be considered as imperfections. They are unavoidable results for which the manufacturer cannot be held responsible.

The foregoing statements and representations made by the respondent, as in this paragraph set out, serve as representations to members of the purchasing public and to retail dealers that such dresses so advertised and offered for sale were, and are, silk dresses.

The representations hereinabove set forth are, and were, grossly false and misleading in that said dresses so represented, designated and referred to are not, and were not, composed of silk, the product of the cocoon of the silkworm, but are, and were, composed of materials other than silk.

PAR. 3. The word "silk" for many years last past has had, and still has, in the mind of the retail dealers and consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm. 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 has been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of wearing apparel designated, described and referred to as "crepe" have been for a long time, and at the present time still are, associated in the public mind with the fabric made from the cocoon of the silkworm, commonly known and understood by the public generally as "silk."

PAR. 4. There are among the competitors of respondent mentioned in paragraph 1 herein corporations, individuals, partnerships, and firms engaged in the manufacture and sale of silk dresses who do not misrepresent the kind of dresses manufactured and offered for sale by them.

PAR. 5. 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 belief that such representations are, and were, true and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth. The use by respondent of the representations aforesaid has unfairly diverted, and does unfairly divert, trade in said commerce to the respondent from its said competitors, and thereby substantial injury is being, and has been done, by respondent to competition in commerce among and between the various States of the United States.

PAR. 6. The above alleged acts and practices of respondent, as hereinabove alleged, are all to the prejudice of the public and respondent's said 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 the 9th day of October 1937, issued and subsequently served its complaint in this proceeding upon respondent Al Hartman, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 3, 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 consented that, without further evidence or other intervening procedure, the Commission may 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 complaint. Thereafter, this 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, Al Hartman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1400 Broadway 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 manufacturing dresses. It sells, and has sold and distributed, such dresses to retail dealers and other customers located in the various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said dresses, 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 said respondent in said dresses, 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 dresses 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 herein, respondent, in soliciting the sale of and selling certain of its dresses, caused, and causes, advertisements and advertising matter to be inserted in newspapers having an interstate circulation. In said advertisements, such dresses offered for sale and sold by respondent were, and are, represented, designated and referred to as "Indo China Washable Crepe Prints." The dresses so advertised and offered for sale, and sold, had, and have, attached thereto tags bearing the following language:

Owing to the peculiar delicacy of all silk weaves, manufacturers will not guarantee them as flawless, or against perspiration, slipping or roughing. There are certain characteristics appearing in the weave of all silks that should not be considered as imperfections. They are unavoidable results for which the manufacturer cannot be held responsible.

PAR. 3. In the manner and through the means above stated, respondent represented, and represents, to retail dealers and to members of the purchasing public generally that such dresses so advertised and offered for sale were, and are, silk dresses. The representations hereinabove set forth are, and were, false and misleading in that said dresses so represented, designated and referred to were not, and are not, composed of silk, the product of the cocoon of the silkworm, but were, and are, composed of materials other than silk.

PAR. 4. The word "silk" for many years last past has had, and still has, in the mind of the retail dealers and consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their pre-eminent qualities. Silk fibre has long been woven into a variety of fabrics. A variety of distinctive terms has been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of wearing apparel designated, described or referred to as "crepe," without a modifying word descriptive of the fibre from which they are made, 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 silkworm, commonly known and understood by the public generally as "silk."

PAR. 5. There are among the competitors of respondent mentioned in paragraph 1 hereof corporations, individuals, partnerships, and firms engaged in the manufacture and sale of silk dresses who do not misrepresent the kind of dresses manufactured and offered for sale by them.

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PAR. 6. The representations made by respondent in connection with the sale and distribution of said dresses in said commerce as hereinabove set out have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such dresses were made of silk, and to cause them to purchase such dresses on account of such erroneous beliefs engendered as above set forth. The representations made by respondent, as aforesaid, have the capacity and tendency to unfairly divert trade to respondent from said competitors, and 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 respondent Al Hartman, 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 of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may 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 complaint, 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 Al Hartman, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its merchandise, women's wearing apparel and dress goods, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word "silk," or any other word of similar import or meaning, to describe products which are not composed wholly of silk,

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the product of the cocoon of the silkworm, but which are composed of a material or materials other than silk.

2. Using the word "crepe" to describe, advertise, brand or label any product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless there is used in immediate connection and conjunction with said word "crepe," in letters of equal size and conspicuousness, a word or words accurately describing the material or materials from which said products are actually made.

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

IN THE MATTER OF

ADAH ALBERTY, TRADING AS ALBERTY'S FOOD
PRODUCTS, ETC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2875. Complaint, July 11, 1936—Decision, Nov. 8, 1937*

Where an individual engaged in sale, under various trade names, of numerous baby foods and health preparations purchased by her from various manufacturing druggists and chemists throughout the United States and thereafter packed, bottled, labeled and sold through medium of wholesale houses, and through doctors and health food stores, principally, located throughout the various States, and, as thus engaged in distribution of her said preparations in commerce among the various States, in substantial competition with others engaged in interstate sale of such foods and preparations recommended for use in treatment of various conditions and ailments for which her respective products were sold and recommended; in extensively advertising the same through newspapers in various cities and health magazines, and through booklets and pamphlets describing her said products and furnished to food stores and by them distributed to public, and through advertising cuts furnished to recognized dealers for use in local newspaper advertising, expense of which she assumed in whole or half, as case might be—

- (a) Falsely represented that her "Regular Alberty's Food," "Phosphate Pellets," "Calcatine Pellets," "Cheno Combination Tablets," and "Spleen and Iron Tablets" had therapeutic value, facts being such preparations, by virtue of the composition thereof, were without therapeutic value and might, in the case of two of said products, have detrimental effect in certain cases or result in strychnine poisoning if long continued in use, and especially in case of children;
- (b) Falsely represented that her "Laxative Blend" and "Hemoglobin Tonic Tablets" had therapeutic value, and that former affected the muscles of the intestines and latter would produce blood regeneration, facts being former did not thus stimulate such muscles in the physiological sense, or affect said muscles, other than as they might be affected by the cathartic Senna ingredient, and only active constituent thereof, latter preparation would not produce blood regeneration nor act as a tonic, and both were without therapeutic value;
- (c) Falsely represented that her said preparation "Cheno," by virtue of the composition thereof, would bring about weight reduction, notwithstanding preparation in question contained no ingredient which, in and of itself, caused or produced any reduction in weight of person using the same;
- (d) Falsely represented that her "Old Style" Food and other Food, sold under her personal trade name, were foods with special therapeutic values, and that latter rebuilt the intestinal tract, was only food so to do, eliminated rickets and other calcium starvation diseases in people, and so modified milk that calcium element was assimilated, and that through use thereof