

Complaint

IN THE MATTER OF

BLOOMINGDALE BROTHERS, INC.

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

Docket 3176. Complaint, July 17, 1937—Decision, Nov. 22, 1937

Where corporate department store operator, engaged in sale and distribution of women's wearing apparel and other allied products, to purchasers in other States, in substantial competition with those engaged in sale and distribution of such apparel and products in various States and in District of Columbia; in advertising its said merchandise in newspapers of interstate circulation—

Represented, designated, and referred to certain dresses as "Windsor Crepe" and certain blouses as "Helm Crepe," notwithstanding fact garments thus advertised and offered were not composed of silk, product of cocoon of silkworm, as long definitely understood in mind of consuming public from word "silk," and were not products thereof, long and still held in great public esteem and confidence for their preeminent qualities, nor silk as understood from word "Crepe," without descriptive qualification, as applied to wearing apparel, as meaning one of terms applied to fabrics resulting from different types of weaving of silk fiber, and as meaning fabric made from cocoon of silkworm, and, as commonly known and understood by public generally, "silk";

With capacity and tendency to mislead portion of purchasing public into erroneous belief that such articles were made of silk, and to cause them to purchase same on account of such erroneous beliefs, and to divert trade unfairly to it from competitors; 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.

Proskauer, Rose & Pashus, 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 Bloomingdale Brothers, Inc., 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 to the Commission that a proceeding by it in respect thereof would be in the public

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interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bloomingdale Brothers, 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 Lexington Avenue and 59th 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 a department store from which it sells, among other things, women's wearing apparel. It sells and has sold and distributed such wearing apparel 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 place 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 certain dresses were and are represented, designated and referred to as "Windsor Crepe." In other of its newspaper advertising certain blouses were and are represented, designated and referred to as "Heim Crepe."

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 are and 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,

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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 "crepe" 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, MODIFIED 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 17th day of July 1937, issued and subsequently served its complaint in this proceeding upon respondent, Bloomingdale Brothers, Inc., 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, W. T. Kelley, Chief Counsel

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for the Federal Trade Commission, and Proskauer, Rose & Paskus, counsel for the respondent, executed a stipulation as to the facts wherein it was agreed that the statement of facts therein recited might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon such 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. Said stipulation as to the facts was subsequently approved by the Commission and was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto and said stipulation as to the 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, Bloomingdale Brothers, 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 Lexington Avenue and 59th 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 a department store from which it sells and distributes women's wearing apparel and other allied products. 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. It causes, and during the time herein mentioned has caused, its said articles of merchandise when sold, to be shipped from its place 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. 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 the various States of the United States and in the District of Columbia, some of which said competitors sell and distribute their merchandise in commerce among and between the various States of the United States.

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PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling its said merchandise, caused, and now causes, advertising matter to be inserted in newspapers having an interstate circulation. In said advertising matter, certain dresses were represented, designated and referred to as "Windsor Crepe," without a modifying word to indicate the fibre of which the fabric was made. In other of its newspaper advertising, certain blouses were represented, designated and referred to as "Heim Crepe," without a modifying word to indicate the fibre of which the fabric was made.

PAR. 3. In the manner and through the means above stated, respondent represented, and represents, to members of the purchasing public that such products so advertised and offered for sale were silk products. The said items of women's wearing apparel so represented, designated and referred to herein were not composed of silk, the product of the cocoon of the silk worm, but were 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 consuming public, 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 have been applied to the fabrics resulting from different types of weaving of silk fibre. Women's wearing apparel designated, described or referred to as "crepe," when used alone, 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 as "silk."

PAR. 5. The use by the respondent of the representations set forth herein have had and now have the capacity and tendency to mislead a portion of the purchasing public into the erroneous belief that such articles were made of silk and to cause them to purchase such articles on account of such erroneous beliefs. The representations made by respondent as aforesaid are deceptive and misleading and have the capacity and tendency unfairly to divert trade to respondent from 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 respondent, Bloomingdale Brothers, Inc., are to the prejudice of the public and of respondent's

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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 the respondent, and a stipulation as to the facts executed by W. T. Kelley, Chief Counsel for the Federal Trade Commission, and Proskauer, Rose & Paskus, counsel for the respondent, the filing of briefs having been waived, and the Commission having made its findings as to the facts and its conclusion that the 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, Bloomingdale Brothers, 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

Using the word "crepe" or any other word of similar import and effect 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 in 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.

Syllabus

IN THE MATTER OF
HEALTH GUARD, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2877. Complaint, July 15, 1936—Decision, Nov. 24, 1937*

Where a corporation engaged, among other things, in manufacture, sale and distribution of its so-called "Health Guard," mechanical device for attachment to gas heaters and stoves to remove or reduce amount of carbon monoxide gas expelled therefrom and in marketing, chiefly, through department stores, jobbers and mail order houses throughout the United States, its product in substantial competition with others engaged in manufacture, sale, and distribution, or in sale and distribution, in commerce among the various States and in the District of Columbia, of stove pipes and of other devices and attachments for similar use on gas-burning appliances, air-conditioning vents and gas heaters; in advertising its said device through newspapers, folders, circulars, labels attached thereto, and in various other ways—

Represented that use thereof on gas appliances would change carbon monoxide gas passing through such device to a harmless substance, and that it was effective and sure in operation and protected against dangers of carbon monoxide poisoning, and constituted safe substitute for stove pipes, use of which it made unnecessary, facts being said device, thus attached, would not change carbon monoxide contained in products of combustion emitted thereby to a harmless gas, was not simple and sure in operation, would not protect user from dangers of carbon monoxide poisoning, and did not constitute safe substitute for stove pipes;

With capacity and tendency to mislead and deceive substantial portion of trade and public into erroneous beliefs that device in question constituted such a safe substitute and had the qualities or properties and result attributed to it as above set forth, and would protect user from dangers of aforesaid poisoning, and with result that public, as consequence of mistaken and erroneous beliefs induced by such false and misleading representations, purchased substantial volume of its said devices in preference to those of competitors, and trade was unfairly diverted to it from competitors engaged in manufacture, sale, and distribution, or in sale and distribution, of stove pipes and other devices used to remove from rooms carbon monoxide gas emitted from gas-burning appliances, and of devices used to prevent carbon monoxide poisoning, and who in no way misrepresent effectiveness, function, or purpose of their respective products; 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. DeWitt T. Puckett for the Commission.

Saperston, McNaughtan & Saperston, of Buffalo, N. Y., for respondent.