

IN THE MATTER OF
ABRAHAM & STRAUS, INC.

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

Docket 3159. Complaint, June 23, 1937—Decision, Jan. 22, 1938

Where a corporation engaged in operation of department store and in sale and distribution therefrom of women's wearing apparel, pillows, and other allied products, to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in similar sale and distribution of such products; in advertising its said merchandise in newspapers having interstate circulation—

- (a) Made use of such words as "silk," "heavy silk," "pure silk prints," "imported silks," "muffler silks," and "silk jerseys," in representing, designating, and referring to certain pillows and items of women's wearing apparel; and
- (b) Made use of words "crepe" or "taffeta" in designating, describing or referring to pillows, dress goods, and other items as aforesaid, without other modifying word as descriptive of fiber of which made;

Notwithstanding fact said various products, thus advertised and offered, were not composed of silk, product of cocoon of silkworm, 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 words "taffeta" or "crepe" without descriptive qualification, as meaning one of terms applied to fabrics resulting from different types of weaving silk fiber and fabric made from cocoon of silkworm, and, as commonly known and understood by public generally, silk;

With capacity and tendency to mislead and deceive portion of purchasing public into erroneous belief that such articles were made of silk, and to cause them to purchase said articles by reason thereof, and to unfairly divert trade to it from competitors aforesaid; 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. W. W. Sheppard*, trial examiner.

Mr. Astor Hogg for the Commission.

Proskauer, Rose & Paskus, 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 Abraham and Straus, Inc., a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competi-

tion 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:

PARAGRAPH 1. Respondent, Abraham and Straus, 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 Fulton and Hoyt Streets in the city of Brooklyn 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, pillows, and other allied products. 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. 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 Brooklyn, 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 pillows, 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 herein, respondent, in soliciting the sale of and selling said merchandise, caused, and now causes, advertising matter to be inserted in newspapers having an interstate circulation. In said advertising matter certain pillows were, and are, represented, designated, and referred to as "silk" and as "heavy silk." In such advertising matter certain items of women's wearing apparel were advertised, designated, and referred to as "seraceta taffeta," "pure dye, pure silk prints * * * many copies of imported silks * * * washable crepes * * * muffler silks * * * and silk jerseys."

Such statements and representations on the part of respondent serve as representations to members of the public that such products so advertised and offered for sale were silk products. The representations hereinabove set forth are, and were, grossly false and misleading in that said pillows and 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 silkworm, 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 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 fiber 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 fiber. Pillows, dress goods, and other items of women's wearing apparel, designated, described, or referred to as "silk," "heavy silks," "seraceta taffeta," "pure dye," "pure silk," "imported silks," "washable crepes," "muffler silks," and "silk jerseys" 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. 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 belief 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 pillows and 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 Federal Trade Commission, on the 23d day of June 1937, issued and

subsequently served its complaint in this proceeding upon respondent, Abraham & Straus, 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 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, Abraham & Straus, 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 Fulton and Hoyt Streets in the Borough of Brooklyn, 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, pillows, 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 Brooklyn, 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 pillows, women's wearing apparel and other allied products, in the

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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.

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 pillows were represented, designated, and referred to as "silk" and "heavy silk." In such advertising matter, certain items of women's wearing apparel were advertised, designated, and referred to as "pure dye, pure silk prints * * * many copies of imported silks * * * muffler silks * * * and silk jerseys," and were advertised, designated, and referred to as "taffeta" and "crepe" without a modifying word to indicate the fiber 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 representations hereinabove set forth are, and were, misleading in that said pillows and items of wearing apparel so represented, designated, and referred to were not, and are not, composed of silk, the product of the cocoon of the silkworm, 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 fiber 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 fiber. Pillows, dress goods, and other items of women's wearing apparel designated, described or referred to as "pure dye," "silk," "heavy silks," "pure silk," "imported silks," "muffler silks," and "silk jerseys" 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." Pillows, dress goods, and other items of women's wearing apparel designated, described, or referred to as "taffeta" and "crepe" when used alone, without a modifying word descriptive of the fiber 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."

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PAR. 5. The use by the respondent of the representations set forth herein have had and now have the capacity and tendency to mislead and deceive 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 to unfairly divert trade to respondent from said 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, Abraham & Straus, 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, 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 finding 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 respondent, Abraham & Straus, 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 or words "silk," "heavy silk," "pure silk prints," "imported silks," "muffler silks," or "silk jerseys," or any word or words of similar import or meaning, to describe products which are not composed wholly of silk, the product of the cocoon of the silk-worm, but which are composed of a material or materials other than silk.

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2. Using the words "crepe" or "taffeta" 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 words "taffeta" or "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.

3. Using the words "pure dye" as descriptive of products which are not composed wholly of silk, the product of the cocoon of the silkworm.

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
PEARSON CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2702. Complaint, Jan. 31, 1936—Decision, Jan. 24, 1938*

Where a corporation engaged in manufacture and sale of candy including various packages or assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which included assortments composed of—

(1) Number of small pieces of candy, number of larger pieces, and small box of candy, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, one of small pieces, or one of larger pieces, in accordance with number pushed by chance, and purchaser of last push received the small box of candy;

(2) Number of candy bars, together with small boxes of candy and push card, for sale under plan, and in accordance with card's explanatory legend, pursuant to which purchaser received, for 5 cents paid, one, two or three bars of candy, and purchasers of last push in each of the two sections into which card was divided received box of candy; and

(3) Number of boxes of candy of varying size and article of merchandise, together with punch board, for sale under a plan, and in accordance with board's explanatory legend, pursuant to which purchaser received, for 5 cents paid, one of aforesaid boxes (value of which, and of aforesaid article, exceeded said amount), or nothing other than punch, in accordance with number secured, and last punch received aforesaid article—

Sold to wholesalers and to retailers, for display and resale to purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with said plan, contrary to public policy long recognized by the common law and criminal statutes, and 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 or any other method of sale contrary to public policy, refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent method because unlawful, lessen competition therein and tend to create monopoly thereof in it and such other distributors as use same or equivalent method, deprive purchasing public of benefit of free competi-