

Syllabus

IN THE MATTER OF

LORD & TAYLOR, BIBERMAN BROS., INC., AND GALEY
& LORD, INC.,COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3141. Complaint, July 21, 1937¹—Decision, Mar. 11, 1938*

Where three corporations, respectively engaged as retailer of coats, dresses, robes, and other items of wearing apparel, manufacturer of dresses for sale and distribution to department and retail stores, and commission house converter and seller of fabrics to the cutting trade; in cooperatively advertising, in newspapers and leaflets, dresses made by aforesaid corporate manufacturer, of said converter's fabrics, of material other than silk, product of cocoon of the silk worm—

- (a) Made use of such words as "Crepe," "Seal Crepe," "silky," and "Pure Dye," through such statements in newspaper advertising as "Soft, silky Seal Crepe, woven from Enka Yarns and printed with charming motifs * * *", and substantially similarly used said words in leaflets describing said garments, and tagged said dresses for offer and sale by said corporate retailer as " * * * made from SEAL CREPE, Fast Color, Pure Dye * * * American ENKA," and on reverse side advised reader or customer that "For best results on SEAL CREPE we recommend dry cleaning"; and

Where said corporate retailer, in newspaper advertising soliciting sale of certain pajama robes and dresses, some of which were composed wholly of other and different materials than silk, product of cocoon of the silk worm—

- (b) Described same, respectively, as "Silk Robes—Rich Brocades, all silk-lined. * * * Silk Facings and Trims in All robes," and as "Satin";

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that said various garments were made from silk, product of the cocoon of the silk worm, and unfairly to divert trade to said corporations from their competitors engaged in sale of dresses, etc., and who accurately describe and brand their said products by terms properly descriptive of fabric content thereof, notwithstanding absence of intent to mislead and deceive in such mistaken designation of said robes and use of other terms as accurately and truthfully describing materials from which garments were made; to 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 and *Mr. George W. Williams* for the Commission.

Gould & Wilkie, of New York City, for Lord & Taylor.

Mr. Erwin Feldman, of New York City, for Biberman Bros., Inc.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City, for Galey & Lord, Inc.

¹Amended.

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AMENDED 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 Lord & Taylor, Biberman Bros., Inc., and Galey & Lord, Inc., corporations, hereinafter referred to as respondents, have been and now are 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 interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lord & Taylor, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located on Fifth Avenue at 38th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in business as a retailer of coats, dresses, robes, and other items of wearing apparel. 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.

Respondent, Biberman Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 15th and Mt. Vernon Street in the city of Philadelphia, State of Pennsylvania, and with a sales office located in the city of New York, State of New York. It is engaged in business as a manufacturer of dresses which it sells and distributes to department stores and retail stores located in the various States of the United States.

Respondent, Galey & Lord, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 57 Worth Street, in the city of New York in said State. It is now, and has been for several years last past, engaged in business as a commission house in converting and selling dress fabrics to the cutting trade located in various States of the United States.

Respondents now cause, and during the time herein mentioned have caused, their articles of merchandise when sold to be shipped from their respective places of business to the purchasers thereof located in the various States of the United States other than the States of origin of such shipments. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondents in their respective products between and among the various States of the United States.

Respondents are now, and at all times herein mentioned have been, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of wearing apparel, dresses, robes, and dress fabrics 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 business as described in paragraph 1 hereof, respondent, Lord & Taylor, purchased and now purchases certain of the dresses offered for sale and sold by it in commerce as set out in paragraph 1 hereof from the manufacturer thereof, respondent Biberman Bros., Inc. The latter concern, in turn, purchased and now purchases the fabric from which said dresses were made from respondent, Galey & Lord, Inc. To aid and facilitate the sale of said dresses, the said Lord & Taylor, with the aid, assistance, and cooperation of said Biberman Bros., Inc., and the said Galey & Lord, Inc., caused and now causes advertising matter to be inserted over the name of Lord & Taylor in newspapers having interstate circulation and in which advertising matter said dresses were represented, designated and referred to as "Soft, silky Seal Crepe, woven from Enka Yarns and printed with charming motifs * * *." The said respondents, acting in cooperation each with the other, also caused and now cause a substantial number of leaflets to be distributed to customers and prospective customers located in various States of the United States and which leaflets referred to such dresses in the following language:

Lovely colors—new, different looking prints on that
marvelously soft, silky Seal Crepe—woven from Enka Yarns

Said dresses displayed and offered for sale by the said Lord & Taylor bear tags and labels placed upon the dresses of respondents in cooperation with each other on which were printed the statement:

This Garment
is made from
SEAL CREPE
Fast Color, Pure Dye
Unweighted and
washable

Made
From

American
ENKA

Enka
Yarn

and the reverse side reads:

A L'Aiglon Frock

For best results on
SEAL CREPE we recom-
mend dry cleaning.

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The said dresses advertised and tagged by said respondents acting cooperatively each with the other, as hereinabove set forth, were and are offered for sale and sold by the said Lord & Taylor in commerce as set forth in paragraph 1 hereof. Such statements and representations served and now serve as representations on the part of respondents that such dresses so advertised and offered for sale were silk dresses.

The representations hereinbefore 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 silk worm, but were composed of materials other than silk.

PAR. 3. Respondent Lord & Taylor, in soliciting the sale of and selling certain pajama robes in commerce as in paragraph 1 hereof, set out, caused and now causes said pajama robes to be advertised in newspapers having interstate circulation as "Silk Robes—Rich Brocades, all silk-lined. A Variety of Handsome Patterns and a Good Color Range. Silk Facings and Trims in All Robes." Also respondent Lord & Taylor in soliciting the sale of and selling certain dresses in commerce as in paragraph 1 hereof, set out, caused and now causes, such dresses to be advertised in newspapers having interstate circulation as "Satin" dresses. In truth and in fact, the said robes and dresses so represented and designated contain no silk, the product of the cocoon of the silk worm, but are composed wholly of other and different materials.

PAR. 4. The word "Silk" for many years past has had, and still has, in the minds of the consuming public a definite and specific meaning, to-wit: the product of the cocoon of the silk worm. Silk fabrics 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, and a variety of distinctive terms has been applied to the fabrics resulting from different types of weaving. Dress goods, pajama robes and other similar products designated, described or referred to as "Silk," "Silky," "Crepe," "Satin," "Pure Dye," and "Seal 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. 5. The use by respondents 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 belief that such representations are true and to cause them to purchase such dresses and pajama robes on account of such

erroneous beliefs engendered as above set forth. There are among the competitors of respondents as mentioned in paragraph 1 hereof corporations, individuals, partnerships, and firms engaged in the sale of dresses and pajama robes and other items of wearing apparel who do not misrepresent the kind of dresses, pajama robes, and other items of wearing apparel offered for sale. By the representations aforesaid, trade is unfairly diverted to respondents from such competitors and thereby substantial injury is being and has been done by respondents to competition in commerce as herein set out.

PAR. 6. The above alleged acts and practices of respondents are all to the injury and prejudice of the public and of respondents' 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 July 21, 1937, issued and subsequently served its complaint in this proceeding upon respondents Lord & Taylor, Biberman Bros., Inc., and Galey & Lord, Inc., charging them 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 respondents' answers thereto, W. T. Kelley, Chief Counsel for the Federal Trade Commission, and Gould & Wilkie, Davis, Polk, Wardwell, Gardiner & Reed, and Erwin Feldman, counsel for respondents, 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, Lord & Taylor, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located on Fifth Avenue at 38th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in business as a retailer of coats, dresses, robes, and other items of wearing apparel. 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.

Respondent, Biberman Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at 15th and Mt. Vernon Street in the city of Philadelphia, State of Pennsylvania, and with a sales office located in the city of New York, State of New York. It is engaged in business as a manufacturer of dresses which it sells and distributes to department stores and retail stores located in the various States of the United States.

Respondent, Galey & Lord, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 57 Worth Street, in the city of New York in said State. It is now, and has been for several years last past, engaged in business as a commission house in converting and selling fabrics to the cutting trade located in various States of the United States.

Respondents caused said articles of merchandise when sold to be shipped from their respective places of business to the purchasers thereof located in the various States of the United States other than the State where the shipments originate. There is now, and has been for the several years last past, a constant current of trade and commerce by said respondents in their respective products between and among the various States of the United States.

Respondents are now, and at all times herein mentioned have been, in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of wearing apparel, dresses, robes, and dress fabrics 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 business as described in paragraph 1 hereof, respondent, Lord & Taylor, purchased and now purchases certain of the dresses offered for sale and sold by it in commerce as set out in paragraph 1 hereof from the manufacturer thereof, respondent Biberman Bros., Inc. The latter concern, in turn, purchased and now purchases the fabric from which said dresses were made from respondent, Galey & Lord, Inc. To aid and facilitate the sale of said dresses, the said Lord & Taylor, with the aid, assistance, and cooperation of said Biberman Bros., Inc., and the said Galey & Lord, Inc., caused advertising matter to be inserted over the name of Lord & Taylor in newspapers having interstate circulation and in which advertising matter said dresses were represented, designated, and referred to as "Soft, silky Seal Crepe, woven from Enka Yarns and printed with charming motifs * * *." The said respondents, Lord & Taylor and Biberman Bros., Inc., acting in cooperation with each other, also caused a substantial number of leaflets to be distributed to customers and prospective customers located in various States of the United States and which leaflets referred to such dresses in the following language:

Lovely colors—new, different looking prints on that
marvelously soft, silky Seal Crepe—woven from Enka Yarns

Said dresses displayed and offered for sale by the said Lord & Taylor bore tags and labels placed upon the dresses by the respondents in cooperation with each other on which were printed the statement:

This Garment
is made from
SEAL CREPE
Fast Color, Pure Dye
Unweighted and
washable

Made
From

Enka
Yarn

American
ENKA

and the reverse side reads:

A L'Aiglon Frock
For best results on
SEAL CREPE we recom-
mend dry cleaning.

The said dresses advertised and tagged by said respondents acting cooperatively each with the other, as hereinabove set forth, were offered for sale and sold by the said Lord & Taylor in commerce as set forth in paragraph 1 hereof.

Said dresses so represented, designated and referred to were not composed of silk, the product of the cocoon of the silkworm, but were composed of materials other than silk.

PAR. 3. Respondent Lord & Taylor, in soliciting the sale of and selling certain pajama robes in commerce as in paragraph 1 hereof set out, caused said pajama robes to be advertised in newspapers having interstate circulation as "Silk Robes—Rich Brocades, all silk-lined. A Variety of Handsome Patterns and a Good Color Range. Silk Facings and Trims in All robes." Also respondent Lord & Taylor in soliciting the sale of and selling certain dresses in commerce as in paragraph 1 hereof set out, caused such dresses to be advertised in newspapers having interstate circulation as "Satin" dresses. In truth and in fact, some of said robes and dresses so represented and designated contained no silk, the product of the cocoon of the silkworm, but were composed wholly of other and different materials.

PAR. 4. Silk fabrics 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, and a variety of distinctive terms has been applied to the fabrics resulting from this type of weaving; dress goods, pajamas, robes, and other similar products designated, described or referred to as "Silk," "Silky," and "Pure Dye," when used to designate and describe the material from which a garment is made, and the words "Crepe," "Satin" and "Seal Crepe," when used alone to designate and describe the material from which a garment is made, have been for a long time, and at the present time still are, associated in the public mind with the material made from the cocoon of the silkworm, commonly known and understood by the public as silk.

PAR. 5. Respondent Lord & Taylor, in designating and describing certain of its robes as "Silk Robes—Rich Brocades, all silk-lined. A Variety of Handsome Patterns and a Good Color Range. Silk Facings and Trims in All robes", as set out in paragraph 3 hereof, did so through mistake and not through any intent to mislead and deceive the purchasing public.

In all the other instances herein mentioned, wherein the other terms hereinabove set out were used by respondents, all of said respondents believed that said terms and designations accurately and truthfully described the material from which the garments were made.

PAR. 6. The use by the respondents of the representations above set forth in describing the materials from which said garments were made had the capacity and tendency to mislead and deceive a sub-

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stantial portion of the purchasing public into the erroneous belief that said garments were made from silk, the product of the cocoon of the silkworm, and to cause them to purchase such articles on account of such erroneous beliefs.

There are among the competitors of the respondents corporations, individuals, partnerships, and firms engaged in the sale of dresses, pajama robes, and other items of wearing apparel who accurately describe and brand such products by terms properly descriptive of the fabric content thereof. The representations made by respondents as aforesaid had the capacity and tendency unfairly to divert trade to respondents from their said competitors. Thereby, substantial injury is being done and has been done by the respondents to competition in commerce as herein set out.

CONCLUSION

The aforesaid acts and practices of respondents Lord & Taylor, Biberman Bros., Inc., and Galey & Lord, Inc., are to the prejudice of the public and of respondents' 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 answers of the respondents and a stipulation as to the facts executed by W. T. Kelley, Chief Counsel for the Federal Trade Commission, and Gould & Wilkie, Davis, Polk, Wardwell, Gardiner & Reed, and Erwin Feldman, counsel for respondents, the filing of briefs having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondents have 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 respondents Lord & Taylor, Biberman Bros., Inc., and Galey & Lord, Inc., their officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of their 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 "Crepe," "Seal Crepe," or any other word or words of similar import or meaning to describe or designate

any fabric or 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 therewith, in letters of at least equal size or conspicuousness, a word or words accurately naming or describing the fiber, material or materials from which said fabric or product is actually made; and provided, that such disclosure of the fiber or material content thereof shall be made by accurately designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent;

2. Using the word "Silky," or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm, unless in the case of a fabric or product composed in part of silk and in part of rayon or of a material or materials other than silk, there is used in immediate connection and conjunction therewith, and in letters of equal size and conspicuousness, a word or words accurately describing the fiber, material, or materials from which said fabric or product was actually made; and provided, that the fiber or material content of such fabric or product be accurately disclosed by designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent;

3. Using the words "Pure Dye," or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm; and

It is further ordered, That the respondent, Lord & Taylor, its officers, representatives, agents, servants, and employees, in connection with the offering for sale, sale, or 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 "silk," or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm, unless, in the case of a fabric or product composed in part of silk and in part of rayon or material or materials other than silk, there is used in immediate connection and conjunction therewith, and in letters of at least equal size and conspicuousness, a word or words accurately describing the fiber, material, or materials from which said fabric or product was actually made; and provided, that the fiber or material content of such fabric or product be accurately disclosed by designating each constituent fiber or material thereof, in

the order of its predominance by weight, beginning with the largest single constituent;

2. Using the word "satin," or any other word or words of similar import or meaning, to describe or designate any fabric or 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 therewith, in letters of at least equal size and conspicuousness, a word or words accurately naming or describing the fiber, material, or materials, from which said fabric or product is actually made; and provided that such disclosure of the fiber or material content thereof shall be made by accurately designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent.

It is further ordered, That the respondents shall within 30 days after the service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

26 F. T. C.

IN THE MATTER OF

LONNIE E. CARTER, INDIVIDUALLY, AND TRADING AS
CARTER CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3300. Complaint, Jan. 15, 1938—Decision, Mar. 11, 1938*

Where an individual engaged in manufacture of candies and processing of salted nuts, and in sale and distribution thereof to wholesalers, jobbers, and retailers, in competition with others similarly engaged in sale and distribution of candies, salted nuts, and peanut confections—

Sold its so-called "Early Bird Peanuts," packed in individual, small, sealed, 5-cent cartons, within small number of which, as placed in larger pasteboard containers, there were concealed, in accordance with individual cartons, and retailers, explanatory display cards, legends advising ultimate purchaser "You may find 5¢, 10¢, 25¢ or \$1," some such sum, as determined through chance selection and breaking of one of such enclosing cartons, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his said product, as displayed and sold by retail purchasers thereof in accordance with such plan or game of chance and in violation of public policy of the common law and criminal statutes and contrary to that of the United States Government;

With result that many dealers in and ultimate purchasers of such products were attracted by element of chance involved in sale thereof, and thereby induced to buy same, thus packed and sold, in preference to nuts or candy of competitors who are not willing to and do not offer and sell their products so packed, assembled, or otherwise arranged as to involve game of chance, and refrain therefrom, and with tendency and capacity thereby to divert to himself trade and custom from competitors who do not use same or equivalent method, and to exclude from said trade all aforesaid unwilling competitors and lessen competition therein, and create a monopoly of said trade in himself and in such other distributors as use same or equivalent method, and to deprive purchasing public of benefit of free competition in said trade and eliminate or exclude therefrom, as case might be, all actual or potential competitors who do not adopt and use such methods:

Held, That such method, acts, and practices were all 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-

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 Lonnie E. Carter, individually, and trading as Carter Candy Company, herein-