

Complaint

26 F. T. C.

IN THE MATTER OF
JOE LIEBOWITZ

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

Docket 3282. Complaint, Dec. 13, 1937—Decision, Apr. 9, 1938

Where an individual engaged in the manufacture of ladies' undergarments and other allied products, and in sale and distribution of such undergarments to retail dealers and other customers in the various States—

Attached and sewed to certain of his aforesaid products a label bearing language "100% Pure Silk," notwithstanding fact that said products, thus represented, designated and referred to, were not composed of pure silk, product of the cocoon of the silk worm, and were not "pure silk," as long understood by retail trade and consuming public generally, i. e., products composed entirely of silk with no weighting material whatsoever, and, as such, regarded by trade and public generally as superior to and much preferred over silk products containing weighting, but were predominantly, or to a substantial degree, composed of non-silk weighting material;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that said products were pure silk, and to cause them to purchase same as result of such belief, and with effect of unfairly diverting trade to him from competitors who do not resort to such methods and practices and do not misrepresent material from which their respective products are made:

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

Mr. George W. Williams 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 Joe Liebowitz, an individual, hereinafter referred to as 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, Joe Liebowitz, is an individual with his office and principal place of business located at 1007 Chandler Avenue, Linden, N. J., and is engaged, and for many years last past has been engaged in the business of manufacturing ladies' undergar-

ments and other allied products. He sells, and has sold and distributed, such undergarments to retail dealers and other customers located in the various States of the United States. He causes said products, when sold, to be shipped from his place of business in Linden, N. J., to the purchasers thereof located in the various States of the United States other than the State of New Jersey. There is now, and has been at all times mentioned herein, a course of trade and commerce by said respondent in said products so sold by him 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 persons and with corporations, firms, and partnerships engaged in the sale and distribution of ladies' undergarments and other allied products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent in soliciting the sale of and selling certain of his products, attaches, affixes, and sews to said products a label bearing the following language, "100% Pure Silk."

The representations made on such label by the respondent as in this paragraph set out serve as representations to retail dealers and to members of the purchasing public that such products so advertised and offered for sale were pure silk. The representations thus made were false and misleading in that said products so represented, designated and referred to were not composed of pure silk, the product of the cocoon of the silk worm, but were predominantly or to a substantial degree composed of weighting material which is not 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. The expression "pure silk" for many years last past has had in the mind of the retail dealers and consuming public generally a definite and specific meaning to wit: a fabric composed entirely of pure silk and without any weighting whatsoever. Silk products for many years have held and still hold a great public esteem and confidence for their preeminent qualities. Products composed entirely of pure silk and without weighting are regarded by the trade and the public generally as superior to and much to be preferred over silk products that contain weighting.

PAR. 4. There are among the competitors of respondent mentioned in paragraph 1 hereof individuals, corporations, partnerships, and firms engaged in the manufacture and sale of ladies' undergar-

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ments and other allied products who do not misrepresent the nature of the material from which such garments are made.

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 products are, and were, pure silk, 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 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 13th day of December 1937, issued and subsequently served its complaint in this proceeding upon respondent Joe Liebowitz, an individual, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On March 10, 1938, the respondent filed his answer, in which answer he admitted all the material allegations of the complaint to be true and stated that he 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 him 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 came on for final hearing before the Commission on said complaint and answer, and the Commission having duly considered the matter and now being 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, Joe Liebowitz, is an individual, with his office and place of business located at 1007 Chandler Avenue, Linden, N. J. He is, and for many years last past has been, engaged in the business of manufacturing ladies' undergarments and other allied products. He sells and distributes such undergarments to retail dealers and other customers located in the various States of the United States. He causes said products, when sold, to be shipped from his place of business in Linden, N. J., to the purchasers thereof located in the various States of the United States other than the State of New Jersey. There is now, and has been at all times mentioned herein, a course of trade and commerce by said respondent in said products so sold by him between and among the various States of the United States. Respondent is now, and at all times herein mentioned has been, in competition with other persons, corporations, firms, and partnerships likewise engaged in the sale and distribution of ladies' undergarments and other allied products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling certain of his aforesaid products, attaches, affixes and sews to said products a label bearing the following language: "100% Pure Silk."

The aforesaid statement made on such labels by the respondent serves as a representation to retail dealers and to members of the purchasing public that such products so labeled, advertised, and offered for sale are "pure silk." The representation thus made is false and misleading, in that, said products so represented, designated and referred to are not composed of pure silk, the product of the cocoon of the silkworm, but are predominantly or to a substantial degree composed of weighting material which is not silk.

PAR. 3. The word "silk" for many years last past has had, and still has, in the minds of the retail dealers and consuming public generally, a definite and specific meaning, to wit: A product of the cocoon of the silkworm. The expression "pure silk" for many years last past has had in the minds of the retail dealers and consuming public generally, a definite and specific meaning, to wit: A fabric composed entirely of silk without any weighting material whatsoever. Silk products for many years have held, and still hold, a great public esteem and confidence for their preeminent qualities. Products composed entirely of pure silk and without weighting are regarded by the trade and the public generally as superior to and much preferred over silk products that contain weighting.

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PAR. 4. There are among the competitors of respondent, referred to in paragraph 1, individuals, corporations, partnerships, and firms engaged in the manufacture and sale of ladies' undergarments and other allied products, who do not misrepresent the nature of the material from which such garments are made.

PAR. 5. The use by respondent of the statements and representations set forth herein has had, and has, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such products are "pure silk," and causes them to purchase said products as a result of such erroneous belief. The use by respondent of the representations aforesaid has unfairly diverted, and does unfairly divert, trade to respondent from those of his said competitors who do not resort to such methods and practices and who do not misrepresent the material from which their respective products are made.

CONCLUSION

The aforesaid acts and practices of the respondent, Joe Liebowitz, an individual, are to the prejudice and injury of the public and of 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."

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 March 10, 1938, by respondent admitting all the material allegations to be true and waiving the taking of further evidence and other intervening procedure, 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, Joe Liebowitz, an individual, his agents, servants, and employees, in connection with the offering for sale, sale and distribution of ladies' undergarments and other allied products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the terms "pure silk" and "100% pure silk," or any other terms or words of similar import and meaning, to describe or designate any fabrics or products which are not composed wholly of silk, the product of the cocoon of the silkworm:

2. 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 silk-worm, 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.

It is further ordered, That the respondent shall within 60 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
**THOMAS R. MOSS, INDIVIDUALLY, AND TRADING AS
OKEENA NOVELTY COMPANY AND MANUFACTURERS
SALES COMPANY**

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

Docket 3332. Complaint, Feb. 10, 1938—Decision, Apr. 9, 1938

Where an individual engaged in offer and sale of radios, bridge sets, mixers, dishes, grill sets, and other articles of merchandise to purchasers in the various States and in the District of Columbia—

- (a) Sold and distributed his products through merchandising plan involving distribution of advertising literature, push cards, order blanks, advertisements illustrating his products, and circulars explaining his said plan, under which particular article or articles included, as set forth on cards' explanatory legends, were awarded to player successful in selecting by chance, from feminine names displayed thereon, particular name revealed, after sale of chances, by removal of master seal, at cost to said player of particular chance, as determined by number punched, and card's number price scale, thereon displayed, and under which operators of said cards were compensated by receipt of such merchandise;

With result that purchasing public was thus induced to buy pushes in hope of selecting prize-winning name or number and thereby obtaining article of merchandise of greater value than amount paid, as likewise determined by lot or chance, and many persons, attracted by his aforesaid method and element of chance involved in sale of his said merchandise, as above set forth, were induced to buy and sell same in preference to that offered and sold by said competitors, who do not use same or equivalent methods, and with further result of supplying means of conducting lotteries in sale of his merchandise in furnishing such push cards to operators thereof, in violation of long standing public policy of common law and criminal statutes and that of United States Government, and with effect of unfairly diverting to said individual trade and custom from competitors, including many who are unwilling to adopt and use such or any method involving game or sale of chance to win by chance, or other method contrary to public policy, and refrain therefrom, and with capacity and tendency so to divert; and

- (b) Included word "Manufacturers" in one of trade names employed by him in carrying on a part of his said business, and also used said word and word "Factories" in such phrases as "Associated Factories" and "Manufacturers and Distributors," in conjunction with or separate from trade name, to describe his said business, and in soliciting sales of his said products, and displayed said trade name and aforesaid words and phrases on letterheads, envelopes, catalogs, circulars, and other matter distributed to customers and prospective customers;

Notwithstanding fact that he did not, either independently or in association with others, make products sold by him, and had never done so, and did not own or operate or directly control or have any interest in, any mill or factory wherein such products were made, but filled orders received by him from factories and mills which he neither owned, operated, nor controlled;