

Complaint

IN THE MATTER OF

EXCELLO FABRICS, INC.

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

Docket 3287. Complaint, Dec. 23, 1937—Decision, June 1, 1938

Where a corporation engaged in sale and distribution of fabrics to garment manufacturers and other customers in the various States—

Designated and referred to certain of its products as "Pure Dye Satin" and "Silk," in advertisements in newspapers and trade publications of interstate circulation, and supplied its customers with labels to be, and which were, attached by them to garments made from said fabrics, containing aforesaid words, and with placards reading "Satin Crysglo Slips * * * The new pure dye satin," for their use in selling and distributing garments made by such customers from said fabrics in commerce among and between the various States, notwithstanding fact said fabrics and garments made therefrom, and thus advertised and offered, were not composed of silk, product of the cocoon of the silk worm, but of other materials;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that said representations were true, and that said fabrics and garments, thus labeled and described, were made from silk, long associated in minds of garment manufacturers and consuming public as definitely and specifically meaning product of cocoon of the silk worm, as were words "Satin" and "Pure Dye," used to designate and describe dress goods and other items of wearing apparel, and to cause such purchasing public, as result of such erroneous beliefs, to buy said products as and for silk, long held in great esteem and confidence for its preeminent qualities, and with effect of unfairly diverting trade to it from competitors, including those engaged in sale and distribution of fabrics in commerce who do not misrepresent the material of which such fabrics are made:

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

Mr. George W. Williams for the Commission.

Eppstein & Hirshfeld, 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 Excello Fabrics, Inc., a corporation, 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 Commis-

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sion 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, Excelllo Fabrics, 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 118 Madison Avenue, 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 selling and distributing fabrics to garment manufacturers and other customers located in the various States of the United States. It causes, and during the time above mentioned has caused, its said goods, 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 course of trade and commerce by said respondent in said fabrics 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 silk, rayon, and other 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 its business as described in paragraph 1 hereof, respondent in soliciting the sale of and selling certain of its products to garment manufacturers and other customers, caused, and now causes, advertising matter, wherein certain of said fabrics bearing the trade name "Crysglo" were, and are, represented, designated, and referred to as "Pure Dye," "Satin," "Pure Dye Satin," to be inserted in newspapers and trade publications having an interstate circulation.

Respondent furnished, and now furnishes, its said customers with labels to be sewn and which were, and are, sewn by such customers to garments made by them from fabrics purchased from respondent. These said labels carried the following words:

SATIN
Reg. U. S.
Bemberg

CRYSGLO

PURE DYE
Pat. Off.
Yarn & Silk

Respondent furnished, and now furnishes, its said customers with certain placards which read, "Satin Crysglo Slips Ask for Crysglo The new pure dye satin." for their use in selling and distributing garments manufactured by them from respondent's fabrics in commerce among and between the various States of the United States.

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 garment manufacturers and other customers of respondent that such fabrics and garments made therefrom so advertised and offered for sale were, and are, silk. The representations hereinabove set forth are, and were, false and misleading in that said products so represented, designated and referred to are not, and were not, composed of silk, the product of the cocoon of the silkworm, but were, and are, 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 garment manufacturers 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 fiber 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 fiber. Dress goods and other items of wearing apparel designated, described and referred to as "Satin" and "Pure Dye" 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 hereof corporations, individuals, partnerships, and firms engaged in the sale and distribution of fabrics who do not misrepresent the material of which such fabrics offered for sale by them are made.

PAR. 5. The use by respondent 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, 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 aforesaid 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 the Federal Trade Commission Act, the Federal Trade Commission on the 23d day of December 1937, issued and subsequently served its complaint in this proceeding upon respondent, Excello Fabrics, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, but denying that any violations of law were intentional, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, briefs having been waived, and the Commission, having duly considered the matter 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, Excello Fabrics, 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 118 Madison Avenue, 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 selling and distributing fabrics to garment manufacturers and other customers located in the various States of the United States. It causes, and during the time above mentioned has caused, its said goods, 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 course of trade and commerce by said respondent in said fabrics 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 silk, rayon, and other fabrics in commerce between and among the various States of the United States and 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 certain of its products to garment manufacturers and other customers caused advertising matter, wherein certain of said fabrics bearing the trade name "Crysglo" were represented, designated and referred to as "Pure Dye," "Satin," and "Pure Dye Satin," to be inserted in newspapers and trade publications having an interstate circulation.

Respondent furnishes its said customers with labels to be sewn by such customers to garments made by them from fabrics purchased from respondent, whereon appear the following words:

SATIN		PURE DYE
Reg. U. S.	CRYSGLO	Pat. Off.
Bemberg		Yarn & Silk

and the same were actually sewn thereon by said customers.

Respondent likewise furnishes its said customers with certain placards which read: "Satin Crysglo Slips Ask for Crysglo The new pure dye satin," for their use in selling and distributing garments manufactured by them from respondent's fabrics in commerce among and between the various States of the United States.

The foregoing statements and representations made by the respondent, as in this paragraph set out, serve as representations to members of the purchasing public, to garment manufacturers and other customers of the respondent, that such fabrics and garments made therefrom and so advertised and offered for sale, were, and are, silk. The representations hereinabove set forth were, and are, false and misleading in that said products 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. 3. The word "silk" for many years last past has had, and still has, in the mind of the garment manufacturers 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 fiber 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 fiber. Dress goods and other items of wearing apparel designated, described and referred to as "Satin" and "Pure Dye" have been for a long time, and

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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 hereof corporations, individuals, partnerships, and firms engaged in the sale and distribution of fabrics in commerce among and between the various States of the United States who do not misrepresent the material of which such fabrics offered for sale by them are made.

PAR. 5. The use by respondent 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 beliefs that such representations were, and are, true and that said fabrics and garments so labeled and described were, and are, made from silk, and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth. The use by respondents of the representations aforesaid has unfairly diverted and does unfairly divert, trade in said commerce to the respondent from its competitors above referred to in paragraph 4.

CONCLUSION

The aforesaid acts and practices of respondent, Excello Fabrics, Inc., are all to the prejudice and injury of the public and respondent's said competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 the 13th day of May 1938, by the 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 the Federal Trade Commission Act.

It is ordered, That the respondent, Excello Fabrics, Inc., a corporation, its officers, agents, servants, and employees, in connection with the advertising and offering for sale, sale, and distribution of fabrics in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using, assisting, or cooperating in the using of 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;

2. Using, assisting, or cooperating in the using of 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 or conjunction therewith, in letters of at least equal size and conspicuousness, a word or words actually 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;

3. Using, assisting, or cooperating in the using of 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 a material or materials other than silk there is used in immediate connection or conjunction therewith 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.

It is further ordered. That the respondent, Excello Fabrics, Inc., shall within 60 days after 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
THE TAREX COMPANY

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

Docket 2925. Complaint, Sept. 21, 1936—Decision, June 2, 1938

Where a corporation engaged in sale and distribution of pharmaceutical preparations or salves, recommended and sold for treatment and cure of eczema, psoriasis, and other skin ailments under three different formulas, known as "Tarex No. 1," "Tarex No. 2," and "Tarex No. 3"; in advertisements thereof and testimonial letters issued, published, and circulated to and among the general public in various periodicals and publications and in other forms of printed matter—

Represented to prospective purchasers and to the public generally that use of said "Tarex" in its various forms constituted an effective remedy or cure for all cases of eczema, psoriasis, and other disorders and diseases of the skin, such as lesions, pimples, blisters, etc., irrespective of form of particular disorder or disease or cause or condition thereof;

The facts being that, in many instances, skin disorders and blemishes are the external manifestations of some internal malfunction or disorder, there is no one prescription that can be used in the treatment of all skin diseases, and that, to effect a cure, it is first necessary to discover cause of internal systemic condition and direct treatment thereto, and that eczema, constituting from 20 percent to 40 percent of all skin ailments and requiring, in its variations, specific and different treatments, is, in most instances, found to be an external manifestation of some internal intoxication, frequently found in the gastro-intestinal tract, and it is necessary, in many instances, to use methods and ingredients other than those provided by said preparations in order to relieve or remove such basic causes, and said preparations or formulas, long known to and used by medical profession, either singly or combined, do not constitute a competent or adequate remedy for treatment and cure of all types or cases of eczema, or of psoriasis, one of most difficult diseases, or for other forms of disorders and diseases of the skin, though possibly efficacious as palliative in some mild cases, and in treatment of some types of eczema, psoriasis and other skin disorders not caused by systemic or metabolic disorder;

With effect of misleading and deceiving purchasers and prospective purchasers of said products into erroneous and mistaken belief that they were effective in treatment and cure of all types of cases of eczema or psoriasis in all stages, and in treatment and cure of all known marks of skin ailments, such as lesions, etc., irrespective of form of particular disorder or disease or cause or condition thereof, and into purchase of said products in such erroneous beliefs, and of thereby diverting unfairly to it trade from competitors, including distributors of like and similar products, and those designed and sold for similar usage and who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products, and do not advertise and otherwise represent that such products have merit or therapeutic value which they do not possess: