

IN THE MATTER OF
H. KLUGER, INC.

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

Docket 3206. Complaint, Aug. 16, 1937—Decision, June 8, 1938

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

- (a) Made use of such words and phrases, in designating and describing certain of its products, as "Pur'Di," "100% Pure Dye," "Pure Silk Filled," "Genuine Pur'Di," and "100% Pure Dye Crepe," through labels bearing words "Pur'Di trade mark 100% Pure Dye, Pure Silk Filled," etc., supplied to customers for affixing to garments made from its said goods, and through such statements, in newspaper and periodical advertising, as "100% Pure Dye Crepe," "Pur'Di, a revolutionary New England lingerie crepe," and "Compare Pure Dye Lingerie with other silk garments at twice the cost";

Notwithstanding fact that said fabrics and garments made therefrom were not composed entirely of silk, product of the cocoon of the silk worm, as long definitely understood by a substantial portion of the garment manufacturers and the consuming public from the word "silk," and as long associated in the minds of a substantial part of the purchasing and consuming public with such phrases as "Pur'Di * * *," "100% Pure Dye * * *," "Pure Silk Filled * * *," "Genuine Pur'Di," "100% Pure Dye Crepe," and "Crepe," as meaning a fabric made from product of cocoon of silk worm, commonly known and understood by public generally as silk, and held in great esteem and confidence for its preeminent qualities in genuine silk products and the variety of weaves in which the fiber has long been woven;

With capacity and tendency to mislead and deceive a substantial portion of public into belief that such fabrics and garments made therefrom, composed in whole or part of rayon, were made entirely of silk, product of the cocoon of the silkworm; and

- (b) Made use of such expressions as "Silk Manufacturers and Distributors" in advertising matter circulated in the various States, and set forth on its letterheads legend or statement "Factories: Paterson, N. J.; Fall River, Mass.; Hillsgrove, R. I.;"

Notwithstanding fact it neither made products offered and sold by it nor owned, operated, nor controlled in any manner mills or factories thus referred to:

With capacity and tendency to mislead purchasers of its said products into erroneous belief that in buying from it they were dealing with manufacturer thereof, and thereby gaining an advantage by saving middleman's profit and obtaining various other advantages not to be had by those buying from middlemen, and to mislead a substantial portion of purchasing public into erroneous belief that such representations were true and to cause them to buy said products as a result thereof, and thereby divert trade unfairly to it from competitors, among whom there are those engaged in sale of piece goods and other allied products who do not misrepresent the kind of goods offered for sale, and do not represent that they are the manufacturers of products offered by them when they are not such:

Complaint

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.
Cole & Morrill, of Paterson, N. J., 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 H. Kluger, 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 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, H. Kluger, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 180 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 piece goods. It sells, and has sold and distributed, such goods to garment manufacturers and other customers 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 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 constant current of trade and commerce by said respondent in said goods 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 piece goods 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 certain of its products, caused and now causes the same to be labeled, and supplies its customers to whom it sells such goods labels to be

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affixed to garments made from such goods, and which said customers did and do affix such labels to garments made by the customers from said products. The said labels bear and bore the following:

PUR'DI
trade mark
100% PURE DYE
PURE SILK FILLED
Washable Pre Shrunk
Genuine
PUR'DI
Trade Mark
Washable Pre Shrunk

In soliciting the sale of and selling said products, respondent caused and now causes advertising matter to be inserted in newspapers, magazines, and other periodicals having an interstate circulation, wherein such products of respondent were described and referred to as "100% Pure Dye Crepe," "Pur'di A Revolutionary New French Lingerie Crepe," "Compare Pure Dye Lingerie with any other silk garments at twice the cost * * *."

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 that such products so advertised and offered for sale were and are silk products. The representations hereinabove set forth are and were grossly 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 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 garment manufacturers and consuming public a definite and specific meaning, 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 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. Dress goods and other items of wearing apparel designated, described and referred to as "Pur'Di * * *," "100% Pure Dye * * *," "Pure Silk Filled * * *," "Genuine Pur'Di," "100% Pure Dye Crepe" and "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 silkworm, commonly known and understood by the public generally as "silk."

PAR. 4. In the course and conduct of its business, respondent used in its advertising matter circulated in various states of the United

States, such expressions as "Sole Manufacturers and Distributors." On its letterheads sent through the mails into different States of the United States the following appeared and now appears: "Factories: Paterson, N. J., Fall River, Mass., Hills Grove, R. I." By the means and in the manner aforesaid, respondent represents that it makes and manufactures the products sold by it, and owns, operates, and controls factories where such products are manufactured. In truth and in fact, respondent did not and does not make or manufacture the products offered for sale and sold by it. It did not and does not own or operate or control in any manner the mills or factories in which said products are or were made or manufactured, but at all times the goods sold by it were made or manufactured in mills or factories which it neither owned or operated or controlled.

The representations made by the respondent, as in this paragraph set out, are false and misleading and have the tendency and capacity to mislead and deceive the purchasers of respondent's products into the erroneous belief that when purchasing from respondent they are dealing with the manufacturer of the products purchased, and thereby are gaining an advantage by saving the middleman's profit and obtaining various other advantages not to be obtained by persons purchasing goods from middlemen.

PAR. 5. There are among the competitors of respondent, mentioned in paragraph 1 herein, corporations, individuals, partnerships, and firms engaged in the sale of piece goods and other allied products, who do not misrepresent the kind of goods offered for sale and who do not falsely represent that they are the manufacturers of the products offered for sale.

PAR. 6. 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 said products as a result of such erroneous beliefs engendered as above set forth. The use 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 said commerce.

PAR. 7. 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 the Federal Trade Commission Act, the Federal Trade Commission, on the 16th day of August 1937, issued and subsequently served its complaint in this proceeding upon the respondent, H. Kluger, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint and the filing of respondent's answer thereto, William T. Kelley, Chief Counsel for the Federal Trade Commission, and Cole and Morrill, counsel for respondent, executed a stipulation as to the facts, wherein it was agreed that the statement of facts therein might be taken as the facts in this proceeding and in lieu of testimony in support of the charges in this complaint and 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 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, H. Kluger, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 180 Madison Avenue, in the city and State of New York. It is now, and for many years last past has been, engaged in the business of selling and distributing piece goods. It sells and has sold and distributed such goods to garment manufacturers and other customers 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 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 herein mentioned, a course of trade in commerce by said respondent in said goods 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 piece goods and other allied products in commerce between and among 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, caused labels to be supplied to its customers, to be affixed to the garments made from such goods, and its said customers did affix such labels to garments made by the customers from said products. Said labels bore the following words and figures:

PUR'DI
trade mark
100% PURE DYE
PURE SILK FILLED
Washable Pre Shrunk
Genuine
PUR'DI
trade mark
Washable Pre Shrunk.

In soliciting the sale of and selling said products, respondent caused advertising matter to be inserted in newspapers, magazines, and other periodicals having an interstate circulation, wherein such products of respondent were described and referred to as "100% Pure Dye Crepe." "Pur'Di, a revolutionary New England lingerie crepe," "Compare Pure Dye Lingerie with other silk garments at twice the cost."

The foregoing statements and representations made by the respondent as in this paragraph set out, had and have the capacity and tendency to mislead and deceive a substantial portion of the public into believing that such fabrics sold and distributed by the respondent, and the garments made therefrom, were and are composed entirely of silk, the product of the cocoon of the silkworm, when such fabrics and garments were not, and are not, in fact, composed of silk, but were and are composed, or partly composed, of material other than silk, namely, rayon.

PAR. 3. The word "silk" for many years past has had, and still has, in the minds of a substantial portion of the garment manufac-

turers and the consuming public, a definite and specific meaning, 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 fiber has long been woven into a variety of fabrics; a variety of distinctive terms has been applied to the fabrics resulting from the different types of weave of silk fiber. Piece goods and other items of wearing apparel designated and referred to as "Pur'Di * * *," "100% Pure Dye * * *," "Pure Silk Filled * * *," "Genuine Pur'Di," "100% Pure Dye Crepe," and "Crepe," have been for a long time, and at the present time still are, associated in the minds of a substantial part of the purchasing and consuming public with a fabric made from the cocoon of the silkworm, commonly known, and understood by the public generally, as silk.

PAR. 4. In the course and conduct of its business, respondent used in its advertising matter circulated in the various States of the United States, such expressions as "Silk Manufacturers and Distributors," and on its letterheads sent through the mails into different States of the United States, the following appeared:

Factories: Paterson, New Jersey;
Fall River, Massachusetts;
Hillsgrove, Rhode Island

thereby giving the impression and understanding that it made and manufactured the products sold by it, and owns, operates, and controls factories in which said products are manufactured. In truth and in fact, respondent did not, and does not now, make or manufacture the products offered for sale and sold by it, nor does it own, operate, or control in any manner the mills or factories above referred to.

Said representations have a capacity and tendency to mislead the purchasers of respondent's products into the erroneous belief that when purchasing from respondent they are dealing with the manufacturer of the products purchased, and thereby are gaining an advantage by saving the middleman's profits, and obtaining various other advantages not to be obtained by persons purchasing goods from middlemen.

PAR. 5. There are, among competitors of respondent mentioned in paragraph 1 herein, corporations, individuals, partnerships, and firms engaged in the sale of piece goods and other allied products, who do not misrepresent the kind of goods offered for sale and who do not represent that they are the manufacturers of products offered for sale when they are not, in fact, manufacturers of such products.

PAR. 6. The use by the respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead 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, thereby diverting trade unfairly in said commerce to respondents from its said competitors referred to in paragraphs 1 to 5 hereof.

PAR. 7. Respondent agreed in said stipulation to abandon as a trade-mark or trade name for the aforesaid products, the words and the use of the words, "Pur'Di," and that it would not use any word or words of similar import or sound, or in any way simulate or paraphrase the same, or the words "pure dye."

CONCLUSION

The aforesaid acts and practices of the respondent, H. Kluger, Inc., are to the prejudice of the public and the respondent's competitors, and constitute unfair methods of competition 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, the answer of the respondent and a stipulation as to the facts executed by William T. Kelley, Chief Counsel of the Federal Trade Commission, and Cole and Morrill, counsel for respondent, the filing of briefs having been waived and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the Federal Trade Commission Act.

It is ordered, That respondent, H. Kluger, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of piece goods 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 and figures "Pur'di," "Genuine Pur'di," "Pure Dye," "100% Pure Dye," and "100% Pure Dye Crepe," or any other word or words, or combination of words and figures, 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 or words, "Pure Silk Filled," or any other word or words of similar import or meaning, to describe or designate 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 actually 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, assisting, or cooperating in the using of the word "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 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.

4. Representing, through the use of the words "factories," "manufacturer," or "manufacturers," or through the use of any other word or term of similar import or meaning, or through any other means or device, or in any manner, that said respondent is the manufacturer of the products sold by it—unless and until such respondent actually owns or operates, or directly and absolutely controls a manufacturing plant or factory wherein said products are manufactured by it.

It is further ordered, That the respondent 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.

Syllabus

IN THE MATTER OF
TAYLOR WASHING MACHINE COMPANY

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

Docket 2733. Complaint, Feb. 29, 1936—Decision, June 9, 1938

Where a corporation engaged in offer, sale, and distribution of washing machines and other electrical appliances in Illinois and Indiana, from its stores, and through canvassers and salesmen by means of installment plan covered by conditional sales contracts signed by prospective purchaser or purchaser—

- (a) Represented, in extensive newspaper and radio broadcast advertising featuring a machine priced at \$49.50, that to interest purchasing public and sell its machines it offered a home demonstration and trial thereof, and that the same would be given "free" and "quickly, courteously, without the slightest red tape or delay," and at the convenience of those applying, through such statements as "Thousands praise the new Taylor. Phone Van Buren 4800 for a home demonstration * * *," "* * * Have a home demonstration * * * See and try this great new washer * * *," "Quickly, courteously, without the slightest red tape or delay, the Taylor people will arrange to send a Taylor washer to your home at a time most convenient to you * * *," "Why don't you too, arrange to see and try this great new washer in your own home—and remember, if you decide to keep it, that it pays for itself with the money it saves * * *," "* * * Yes. * * * The Taylor people will be glad to arrange a free demonstration in your own home * * *," and represented orally, through solicitors and salesmen, to prospects and members of purchasing public, that it offered free trial demonstration of its said machine and that any machine requested would be delivered for such trial and demonstration;

Facts being it had not been and was not its practice to give or provide such free home trial or demonstration or any home trial or demonstration prior to purchase, or without financial or contractual obligation, but its practice, on the contrary, upon such request from members of purchasing public, and pursuant to its aforesaid offer, was to involve requesting person with purported contractual and financial obligations, to induce or require payment of moneys by such persons, and to involve them in "red tape" and with "inconveniences" incident to its transactions with them;

- (b) Made it its practice, through its said salesmen, forthwith to procure names and signatures of persons interested by it through such pretended offers of trial or demonstration without contractual obligation to purchase, to an actual and outright form of contract, through falsely and misleadingly representing that such instrument or contract of purchase was either a receipt for machine being or to be delivered for such trial or demonstration, or was for purpose of showing such a delivery and needed by company to show that a machine had been left during term of trial or demonstration, or was a form of insurance or protection covering the machine while in the prospect's possession, and made it its practice, upon