

Complaint

IN THE MATTER
BELVEDERE SILKS, INC.

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

Docket 3280. Complaint, Dec. 7, 1937—Decision, June 9, 1938

Where a corporation engaged as converter of fabrics and in sale thereof to garment manufacturers and other customers in the various States and in the District of Columbia—

Included word "Silks" in its corporate name, under, over, and in connection with which it offered, advertised, sold, and distributed fabrics made wholly or in part of products other than, but which simulated and had appearance of, silk, without using in connection and conjunction therewith any word or words accurately describing or designating fiber or materials of which said fabrics were composed, and caused fabrics made, sold, and distributed by it to be advertised, designated, and represented as "Silk" and as "Belvedere Silks," and as having been tested by certain specified testing company;

Notwithstanding fact said fabrics were not silk, as long definitely and specifically understood from word in minds of garment manufacturing and general trade and of consuming public as meaning made from cocoon of silkworm, products of which have long been held in great esteem and confidence for their preeminent qualities, but were composed wholly or in part of rayon;

With capacity and tendency to mislead and deceive purchasers into erroneous belief that said fabrics were made wholly or in part of silk, and with effect of aiding and enabling dealers, garment manufacturers, and other purchasers to resell such fabrics without disclosure of their true content and deceive purchasers and consuming public, and with capacity and tendency further to divert trade unfairly to it from competitors, including those engaged in manufacture and sale of such fabrics who do not misrepresent material of which they 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.

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 Belvedere Silks, 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 of Congress, 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, Belvedere Silks, 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 1384 Broadway, 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 manufacturing fabrics. It sells, and has sold and distributed, such fabrics to garment manufacturers and other customers located in the various States of the United States, and in the District of Columbia. It causes its said fabrics, when sold, to be shipped from its place of business in New York City, N. Y., to the purchasers thereof located in the various States of the United States, other than the State of New York or other than the State of origin of such shipments.

There is now, and has been at all times mentioned herein, a course of trade and commerce by said respondent in said fabrics so sold by it between and among the various States of the United States. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of similar fabrics in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. (a) In the course and conduct of its business as aforesaid, respondent for more than 1 year last past has caused, and continues to cause, its corporate name, Belvedere Silks, Inc., and the words "Belvedere Silks" to be used as the name under which it offers for sale, advertises, sells, and distributes fabrics which are not composed of silk, the product of the cocoon of the silkworm, but which are composed of fiber other than silk; namely, rayon, and which simulate and have the appearance of silk. Said acts and practices of the respondent are calculated to cause, and have the capacity and tendency to cause, and have the effect of causing said fabrics composed of fiber other than silk to be purchased by the purchasing and consuming public under the erroneous and mistaken belief that such fabrics are composed of silk, the product of the cocoon of the silkworm.

(b) In the course and conduct of its business as aforesaid, respondent for more than one year last past has manufactured fabrics which are not silk, but which closely simulate and resemble and have the appearance of being silk fabrics. Respondent causes such fabrics closely simulating and resembling silk to be marketed through the channels of trade to the consuming public without disclosure of the fact that said fabrics are composed of fiber other than silk, or that said fabrics are not silk. Such practices of respondent have the

capacity and tendency to mislead and deceive, and such practices furnish customers of respondent and retail dealers in garments with means and instrumentalities to mislead and deceive the public into the erroneous belief that the said fabrics and the garments manufactured therefrom and so offered for sale and sold are silk fabrics and silk garments, and into the purchase of such fabrics and garments made therefrom in reliance on such mistaken and erroneous beliefs.

(c) In the course and conduct of its business as aforesaid, respondent for a period of more than 1 year last past has caused fabrics manufactured, sold and distributed by it to be advertised, designated and represented as "Belvedere Silks," and as "Silk," and as "Silk which had been tested by the United States Testing Company," when in truth and in fact said fabrics were not silk but were composed of fiber other than silk, to wit: rayon.

PAR. 3. The word "silk" for many years last past has had, and still has, in the minds of the garment manufacturing trade and in the mind of the consuming public a definite and specific meaning, to wit: the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities.

PAR. 4. There are among the competitors of respondent mentioned in paragraph 1 hereof corporations, individuals, partnerships, and firms engaged in the manufacture and sale of fabrics who do not misrepresent the material of which such fabrics offered for sale by them are made.

PAR. 5. The aforesaid acts and practices of the respondent set forth in paragraph 2 hereof are, and have been, false, misleading, and deceptive and have, and have had, the capacity, tendency and effect of misleading and deceiving purchasers into the erroneous belief that said fabrics contained, or were composed of silk. The said acts and practices of the respondent as set forth in paragraph 2 were committed and engaged in by respondent with the purpose and intent of thereby misleading and deceiving purchasers and aiding dealers, garment manufacturers, and other purchasers to resell said fabrics without disclosure of their true content and under circumstances deceptive to purchasers and the consuming public. By the use of the representations aforesaid, trade has been unfairly diverted to respondent from said competitors. 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 are all to the injury and prejudice of the public and of respondent's com-

petitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 7th day of December 1937, issued, and subsequently served, its complaint in this proceeding upon respondent, Belvedere Silks, Inc., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, W. T. Kelley, Chief Counsel to the Federal Trade Commission, and respondent, Belvedere Silks, Inc., 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 inference 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 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, Belvedere Silks, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 1384 Broadway, 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 converter of fabrics. It sells, and has sold and distributed, such fabrics to garment manufacturers and other

customers located in the various States of the United States, and in the District of Columbia. It causes its said fabrics, when sold, to be shipped from its place of business in the city of New York to the purchasers thereof located in the various States of the United States other than the State of New York or other than the State of origin of such shipments.

There is now, and has been at all times mentioned herein, a course of trade and commerce by said respondent in said fabrics so sold by it between and among the various States of the United States. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of similar 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 aforesaid, respondent has caused its corporate name, Belvedere Silks, Inc., to be used as a name under, over, and in connection with which it offers for sale, advertises, sells, and distributes fabrics which are not composed wholly of silk, the product of the cocoon of the silkworm, but which are composed wholly, or in part, of fabrics other than silk, and which simulate and have the appearance of silk, namely, rayon, without using in connection and conjunction therewith any word or words accurately describing or designating the fiber or materials of which the said fabrics are composed.

PAR. 3. In the course and conduct of its business as aforesaid, the respondent has caused fabrics manufactured, sold and distributed by it to be advertised, designated, and represented as "Silk," and as "Belvedere Silks," and that such advertised fabrics have been tested by the United States Testing Co., when, in truth, and in fact, said fabrics were not silk, but were composed wholly, or in part, of fiber other than silk, to wit, rayon.

PAR. 4. The word "Silk," for many years last past, has had, and still has, in the minds of the garment manufacturing and general trade and in the minds of the consuming public, a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, a great esteem and confidence for their preeminent qualities.

PAR. 5. There are amongst the competitors of respondent, mentioned in paragraph 1 hereof, corporations, individuals, partnerships, and firms engaged in the manufacture and sale of such fabrics who do not misrepresent the material of which such fabrics offered for sale by them are made.

Order

27 F. T. C.

PAR. 6. The aforesaid acts and practices of respondent, were, and are, misleading and deceptive, and have the capacity and tendency to mislead and deceive purchasers into the erroneous belief that said fabrics were composed wholly of silk and the said acts and practices of respondent, as hereinabove set forth, were, and are, such as to aid and enable dealers, garment manufacturers and other purchasers, to resell such fabrics without disclosure of their true content, and to deceive purchasers and the consuming public. The use of the representations aforesaid on the part of the respondent has the capacity and tendency to divert trade unfairly to respondent from competitors referred to in paragraph 5 hereof.

CONCLUSION

The aforesaid acts and practices of respondent, Belvedere Silks, Inc., are all 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 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 the stipulation as to the facts executed by W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the respondent, Belvedere Silks, Inc. (the filing of briefs having been waived), 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 respondent, Belvedere Silks, Inc., its officers, representatives, agents, and employees in connection with the advertising and offering for sale, sale and distribution of its merchandise and fabrics in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

Using, assisting, or cooperating in the using of the word or words "Silk" or "Belvedere Silk," or any other word or words of similar import or meaning in its corporate name, or in any other manner, 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 fabrics or products composed in part of silk and in part of rayon, or materials other than silk, there is used in immediate connection or 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 fabrics or products are actually made; and provided, that the fiber or material content of such fabrics or products 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 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
**SEAGRAM-DISTILLERS CORPORATION AND SEAGRAM-
DISTILLERS CORPORATION OF MASSACHUSETTS**

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

Docket 2988. Complaint, Nov. 23, 1936—Decision, June 10, 1938

Where a corporation engaged in the sale and distribution of certain brands of whiskies, gins, and other alcoholic beverages, subsidiary of a holding company which carried on its extensive operations through it and many other subsidiaries, and one of the four largest distributors of alcoholic liquors in the United States, products of which were in large demand, employer of a large number of salesmen who travel throughout the United States and call upon and solicit the trade of wholesalers, retailers, hotels, bars, and restaurants, and substantial advertiser in periodicals and newspapers, and seller, direct, of its products through or to carefully chosen wholesale distributors for resale to package stores, retailers, and bars, and upon the definite agreement that they will observe minimum resale prices scheduled by it in price lists, published by it for different States, and setting forth prices to wholesalers, suggested minimum wholesale prices to retailers, and suggested minimum resale prices for sale of its products by latter to ultimate purchaser or consumer, and will sell only to retailers who similarly observe such suggested minimum resale prices;

In pursuance of a system or policy of merchandising, adopted to stabilize and make uniform resale prices of its said products in the District of Columbia, and whereby it fixed specified standard and uniform resale prices, discounts, and "mark-ups," at which its said products should be resold by wholesalers and retailers in said District, and under which it received and accepted active support and cooperation of such wholesale and retail dealers in the maintenance of such resale prices, etc., and in order to carry out and make effective said system or policy—

- (a) Entered into agreements or understandings with wholesale and retail dealers and others in said District purporting to bind them to maintain its said retail prices, discounts, and mark-ups, and obtained and accepted the cooperation of such wholesalers, etc., in the maintenance of such prices, etc., and prevented wholesalers and retailers in said District, by virtue of such agreements or understandings, from reselling said products in said District at prices lower than said minimum resale prices thus fixed by it; and
- (b) Entered into agreements with its wholesale distributors in said District whereby (1) Such distributors agreed to sell only to such retailers as would agree to resell its products at minimum prices suggested by it; to sell such products at a uniform fixed price to retailers and allow no discounts from lists of prices suggested by it; to cut off supplies of all retailers found cutting prices and to compile and maintain reports or lists of those retailers who did not maintain such suggested minimum resale prices; to dismiss salesmen found offering or giving a discount or part of their commission to retailers; to report to it names of wholesalers who offered or were suspected of offering discounts to retailers; and to cut off supplies from