

IN THE MATTER OF

JANE ENGEL, INC., AND KALLMAN & MORRIS, INC.

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

Docket 3281. Complaint, Dec. 8, 1937—Decision, July 14, 1938

Where a corporate retailer of dresses and other items of wearing apparel for women; in connection with offer and sale of certain dresses purchased by it for sale and distribution to retail stores and other customers in the various States, and bearing the trade name label of said manufacturer—

- (a) Represented, designated, and referred to said garments as "Silk Jersey" in advertising matter over and in connection with its name and in publications of interstate circulation; and

Where said manufacturer and said retailer—

- (b) Respectively advertised and caused to be advertised certain of its dresses in publications of interstate circulation as "Celanese Russian Eagle Satin," "Celanese Crepe," and "Celanese Taffeta," together with its aforesaid trade name, and purchased, resold, and delivered some of said dresses, thus labeled, to various customers in States other than State of origin of shipments thereof;

Facts being said dresses, fabrics of which closely simulated, and had the appearance of silk fabrics, long held in great public esteem for their preeminent qualities, were not made wholly of silk, product of the cocoon of the silk worm, as long associated in the public mind with words "Satin," "Crepe," and "Taffeta" used alone to designate or describe dress goods and other similar products, but were made wholly or in part of rayon, and word "Celanese" was not sufficiently understood by a substantial portion of purchasing public as only a trade name used in connection with certain rayon fabrics or to place such purchasers on notice that fabric thus designated was in fact rayon and not silk, even though used by a corporation of that name as a proprietary trade name to designate and describe its product and registered in Patent Office and employed by said manufacturer and retailer as correctly describing materials from which said dresses were made;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that such dresses were made wholly from silk, product of the cocoon of the silkworm, and were not made in whole or part of rayon, and with capacity and tendency to divert trade to such manufacturer and retailer from their competitors, among whom there are those engaged in the sale of dresses who accurately describe and brand their products by terms properly descriptive of the fabric content thereof; to the substantial injury of such competitors in commerce between and among the several States and in the District of Columbia:

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

Mr. George W. Williams for the Commission.

Mr. Henry W. Freeman, of New York City, for Jane Engel, Inc.

Daru, Hellman & Winter, of New York City, for Kallman & Morris, Inc.

Complaint

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 Jane Engel, Inc., a corporation, and Kallman & Morris, Inc., a corporation, hereinafter referred to as respondents, have been and are 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 Jane Engel, 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 Madison Avenue at Seventy-ninth 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 dresses and other items of wearing apparel for women. 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 Kallman & Morris, 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 530 Seventh Avenue in the city of New York, in said State. It is engaged in business as a manufacturer of dresses which it sells and distributes to retail stores and other customers located in the 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 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 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 persons, firms, and partnerships engaged in the sale and distribution of dresses and other items of wearing apparel for women in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent Jane Engel, Inc., 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 Kallman & Morris, Inc. To aid and facilitate the sale of said dresses, the said Jane Engel, Inc., with the aid, assistance, and cooperation of said Kallman & Morris, Inc., caused, and now causes, advertising matter to be inserted over the name of Jane Engel, Inc., in newspapers having an interstate circulation. In said advertising matter said dresses are represented, designated and referred to as "Silk Jersey." Such dresses bear a label which is sewn to them and which reads, "Original Kalmour Gown." The expression "Original Kalmour Gown" is a trade name of respondent Kallman & Morris, Inc., and such respondent attached said labels to the dresses supplied respondent, Jane Engel, Inc.

The said dresses advertised by said respondents, acting cooperatively each with the other, as hereinabove set forth were, and are, offered for sale and sold by the said Jane Engel, Inc., in commerce as set forth in paragraph 1 hereof. The statements and representations made by respondents in said advertisements serve as representations that such dresses so advertised and offered for sale were, and are, silk dresses. The representations hereinabove set forth are 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 silkworm, but are composed of materials other than silk. The representations hereinabove set out were designed and intended to have, and do have, the capacity, tendency, and effect of misleading, deceiving, and defrauding the purchasing public into the false and erroneous belief that said dresses are composed of silk.

PAR. 3. In the course and conduct of its business, respondent Kallman & Morris, Inc., for more than 1 year last past has caused, and continues to cause, fabrics to be manufactured which are not silk but which closely simulate and resemble silk and have the appearance of being silk fabrics. Said respondent causes such fabrics so 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 the customers of said respondent who are retail dealers in its garments with a means and instrumentality to mislead and deceive the public into the erroneous belief that the said fabrics are 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.

Respondent Kallman & Morris, Inc., in soliciting the sale of and selling the dresses manufactured by it to the trade generally and in commerce as in paragraph 1 hereof set out causes such dresses to be advertised in newspapers having an interstate circulation. In said advertisements such dresses are described, designated, and referred to as being "Celanese Russian Eagle Satin," "Crepe," and "Taffeta." Such statements and representations serve as representations on the part of respondent Kallman & Morris, Inc., that such dresses so advertised and offered for sale were silk dresses. Such representations are, and were, false and misleading in that said dresses so represented, designated, and referred to were not composed of silk. Said representations made by respondent Kallman & Morris, Inc., have the capacity, tendency, and effect of misleading and deceiving the purchasing public into the false and erroneous belief that said articles of merchandise were composed of silk.

PAR. 4. The word "silk" for many years last 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 silkworm. 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, and other similar products designated, described, or referred to as "Silk," "Crepe," "Satin," and "Taffeta" 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 as silk.

PAR. 5. The use by respondents of the representations set forth herein has had, and now has, the capacity and tendency to, and they do, mislead and deceive, and were, and are, designed to mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that such representations are true, and into the purchase of such items of wearing apparel on account of such erroneous beliefs brought about as above set out. There are among the competitors of respondents as mentioned in paragraph 1 hereof corporations, individuals, partnerships, and firms engaged in the sale of women's wearing apparel and other allied products who do not misrepresent the material of which wearing apparel offered for sale by them is made. By use of the representations aforesaid, trade has been, and is, unfairly diverted to respondents from said competitors. Thereby, substantial injury is being, and has been, done by respondents to com-

petition in commerce among and between the various States of the United States.

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 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 December 8, 1937, issued and subsequently served its complaint in this proceeding upon respondents, Jane Engel, Inc., and Kallman & Morris, Inc., charging them 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 an answer thereto by respondent, Jane Engel, Inc., admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which answer was duly filed in the office of the Commission, and the respondent, Kallman & Morris, Inc., filing its answer thereto, W. T. Kelley, Chief Counsel for the Federal Trade Commission and Daru, Hellman & Winter, counsel for the respondent Kallman & Morris, Inc., executed a stipulation as to the facts herein. It was agreed that the statement of facts therein may 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 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 answers 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, Jane Engel, 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 Madison Avenue at Seventy-ninth 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 dresses and other items of wearing apparel for women. 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 the District of Columbia.

Respondent, Kallman & Morris, 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 530 Seventh Avenue, 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 manufacturer of dresses, which it sells and distributes to retail stores and other customers located in the various States of the United States.

Respondents caused, and cause, said articles of merchandise, when sold, to be shipped from their respective places of business in the State of New York to purchasers thereof located in the various States of the United States other than the State where the shipments originated. There is now, and has been at all times mentioned herein, a course of trade in 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 persons, firms, and partnerships engaged in the sale and distribution of dresses and other items of wearing apparel for women in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business respondent Jane Engel, Inc., purchased certain of the dresses offered for sale and sold by it in commerce, as set out in paragraph 1 hereof, from respondent Kallman & Morris, Inc., the manufacturer of said dresses.

To facilitate the sale of said dresses, respondent Jane Engel, Inc., caused certain advertising matter to be inserted over, and in connection with, its name in publications having an interstate circulation. In said advertising matter said dresses were represented, designated, and referred to as "Silk Jersey." Each of such dresses bears a label which was sewn on them by respondent Kallman & Morris, Inc., the manufacturer thereof, and reads "Original Kalmour Gown." The

expression "Original Kalmour Gown" is a trade name of respondent Kallman & Morris, Inc.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, respondent Kallman & Morris, Inc., has advertised certain of its dresses, and caused the same to be advertised, in publications having an interstate circulation, which said advertisements referred to and designated said dresses in the following words, to wit:

Celanese Russian Eagle Satin,
Celanese Crepe and
Celanese Taffeta,

and as "Kalmour Gowns" and as "By Kalmour." Said dresses were not made wholly of silk, the product of the cocoon of the silkworm, but were made wholly, or partly, of rayon, a material which resembles silk in appearance, and said dresses were sold and delivered by respondent Kallman & Morris, Inc., in commerce as set forth in paragraph 1 hereof.

Respondent, Jane Engel, Inc., among others, purchased and resold and delivered some of said dresses, so labeled, to its various customers in States other than the State of the origin of such shipments.

PAR. 4. Silk fabrics for many years have held, and still hold, great public esteem for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics of distinction, resulting from different types of weaves and treatment of fiber, and dress goods and other similar products designated, described, or referred to as "satin," "crepe," and "taffeta," when used alone to designate or describe the materials from which the garment is made, have been for a long time, and at the present time still are, associated in the public mind with material made from the product of the cocoon of the silkworm, commonly known, and understood by the public, as silk. The word "Celanese" used by respondent Kallman & Morris, Inc., is not sufficiently understood by a substantial portion of the purchasing public to be identified as only a trade name used in connection with certain rayon fabrics or to place said purchasers on notice that the fabric so designated is in fact rayon, and not silk, even though the said word "Celanese" is a proprietary trade name used by the Celanese Corporation of America to designate and describe its products, and even though said trade name is registered in the United States Patent Office, and even though the respondents believed said designations correctly described said materials from which said dresses were made.

PAR. 5. The advertisements on which said complaint was based were apparently arranged for prior to the publication by the Commission of the Trade Practice Rules for the Rayon Industry, namely October

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26, 1937, and the words above set forth were the names under which said goods were purchased from the said Celanese Corporation of America.

PAR. 6. The use by the respondents Kallman & Morris, Inc., and Jane Engel, Inc., of the words "Celanese Russian Eagle Satin," "Celanese Crepe," and "Celanese Taffeta," and the use by the respondent Jane Engel, Inc., of the words "Silk Jersey," in connection with the offering for sale and sale of said dresses as hereinabove set forth, in describing materials from which said dresses were made, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said dresses were made wholly from silk, the product of the cocoon of the silkworm, and not wholly or partially from rayon, in that said fabrics, of which said dresses were composed, closely simulated silk and had the appearance of being silk fabrics. There are among the competitors of the respondents, corporations, individuals, partnerships, and firms engaged in the sale of dresses who accurately describe and brand their products by terms properly descriptive of the fabric contents thereof. The representations made by the respondents as above set out have the capacity and tendency to divert trade to the respondents from their competitors and thereby substantially to injure said competitors in commerce between and among the several States of the United States and in the district of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Kallman & Morris, Inc., and Jane Engel, Inc., are all to the prejudice of the public and the respondents' 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 respondent, Jane Engel, Inc., in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the answer of respondent, Kallman & Morris, Inc., and a stipulation as to the facts executed by

William T. Kelley, Chief Counsel for the Federal Trade Commission, and Daru, Hellman & Winter, counsel for respondent, Kallman & Morris, Inc. (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 the Federal Trade Commission Act.

It is ordered, That respondent, Jane Engel, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of dresses, and other like garments and merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Using the word or words "Silk" or "Silk Jersey," 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 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, 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 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 respondents, Jane Engel, Inc., and Kallman & Morris, Inc., their officers, representatives, agents, servants, and employees, in connection with the offering for sale, sale, and distribution of dresses, and other like garments and merchandise, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word "Celanese," or any other word or term descriptive of a particular process by which rayon fabrics are made, to designate or describe rayon, or fabrics or products made or composed of rayon, unless there is used in immediate conjunction therewith the word "Rayon," with at least equal prominence, conspicuousness, and emphasis.

2. Using the words "Satin," "Crepe," or "Taffeta," or any other 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 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 actually designating each 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 60 days after 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.

IN THE MATTER OF
GRANADA VINEYARDS, INC.

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

Docket 2720. Complaint, Feb. 13, 1936—Decision, July 21, 1938

Where a corporation engaged in purchasing and bottling wine and in sale thereof at wholesale to New England retailers, and with bottling plant and place of business in the East, where it bottled wine purchased by it in California and elsewhere—

- (a) Made use of word "Vineyards" in its corporate name, and displayed such representation on stationery, invoices, advertising matter, and labels attached to bottles in which it shipped its product, notwithstanding fact it owned no vineyard, and neither its immediate nor ultimate customers obtained wine produced or bottled by the original vintner, and it had never made, or caused to be made for its own use, any wine from a small vineyard leased by it, or ever harvested a crop of grapes therefrom;
- (b) Represented on stationery, invoices, etc., as above set forth, that it was a producer of wine, notwithstanding fact it produced no wines whatsoever, did not crush the grapes or other materials from which its wine was made, nor ferment the must thereof, and did not, by virtue of its operations, bring itself within the provisions of certain regulations of the Federal Alcohol Administration relating to nonindustrial use of distilled spirits and wine, under which bottler or packer of such wine, if also maker of not less than 75 percent thereof by crushing the grapes or other materials, fermenting the must, and clarifying the product, may describe himself on label or container as a producer; and
- (c) Falsely represented that it was an importer, notwithstanding fact it had never imported any wine whatsoever;

With the result of representing thereby to its customers, and furnishing them with means of representing to retail dealers and ultimate consuming public, that wines thus sold by it were sold by an actual importer of foreign wines and by a producer and manufacturer of domestic wines, without the intervention of a middleman or a middleman's profit, and of inducing the purchase of its wines by dealers and general public in understanding and belief that it was in fact an importer, producer, and vintner, and owner of the vineyards where the grapes were grown from which its wine was produced;

- (d) Represented on stationery, invoices, and other advertising matter, and on labels attached to bottles in which it shipped its said wines, and in various other ways, to its customers, whom it supplied thereby with means of representing to their vendees, both retailers and ultimate consuming public, that it had an office at Santa Rosa, Calif., or St. Helena, Calif., or both, and that its said office and place of business in the East was merely the office or headquarters of its "Eastern division," notwithstanding fact it had no office at either of said places, centers of important California wine-growing districts, visited latter center only intermittently through its wine buyer, and maintained no office or personnel there, and had only a post-