

Complaint

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IN THE MATTER OF
GIMBEL BROTHERS, INC.

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

Docket 3273. Complaint, Nov. 23, 1937—Decision, Dec. 7, 1938

Where a corporation engaged as department store operator in sale and distribution of women's wearing apparel and other allied products; in advertising women's undergarments in newspapers of interstate circulation and in labels attached thereto—

Represented said garments, as case might be, as "12½% silk and wool 10% wool" or "12½% to 25% silk and wool." notwithstanding fact that many of such articles did not in fact contain silk or wool in any quantity or percentage whatsoever;

With effect of misleading and deceiving purchasing and consuming public into mistaken and erroneous belief that articles thus described contained represented percentages of silk and wool, as, respectively, long definitely and favorably associated in mind of consuming public with product of cocoon of silk worm and fleece from sheep, products of which, respectively, have long been held in great public esteem and confidence for their preeminent qualities, and, in case of those herein concerned, purchased by substantial portion of public in preference to those not made of silk or wool; and

With capacity and tendency to induce purchase of such items of wearing apparel on account of mistaken and erroneous beliefs on part of substantial portion of purchasing public that such representations were true, and with result that trade was diverted unfairly to it from competitors engaged in sale of women's wearing apparel and other allied products, and who do not misrepresent the material of which such apparel is made:

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

Mr. George W. Williams for the Commission.

Chadbourne, Wallace, Parke & Whiteside, 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 Gimbel Brothers, 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, Gimbel Brothers, 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 Thirty-third Street and Broadway, New York, in said State. It is now, and for many years last past has been, engaged in the business of operating a department store from which it sells and distributes women's wearing apparel and other allied products. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public 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 articles of merchandise, when sold, to be shipped from its place of business in New York, N. Y., 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 merchandise 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 women's wearing apparel and other allied products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 herein, respondent, in soliciting the sale of and selling said merchandise, caused, and now causes, advertising matter to be inserted in newspapers having an interstate circulation. In said advertising matter, certain panties and vests worn by women were, and are, represented, designated, and referred to as "12½% to 25% silk and wool panties." Attached to the panties sold and distributed as hereinabove set out appears a label bearing the following:

12½%

SILK AND WOOL

10% WOOL

Such statements and representations on the part of the respondent serve as representations to members of the public that such garments so advertised and offered for sale contain substantial percentages of silk and wool. The representations hereinabove set forth are and were grossly false and misleading in that said garments so represented, designated, and referred to did not contain any silk or wool. Said representations hereinabove set out were designed and intended to

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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 articles of merchandise contain substantial, or the represented, percentages of silk and wool.

PAR. 3. The word "silk" for many years last past has had and still has in the mind of 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. A substantial portion of the public and many purchasers of ladies' undergarments, including panties, prefer and desire to purchase undergarments which are made of cloth or fabric composed of wool and silk as distinguished from garments made of cloth or fabric composed of other materials.

PAR. 4. The use by respondent of the representations set forth herein have had, and now have, 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 were and are true, and have and do induce the purchase of such items of wearing apparel on account of such erroneous beliefs brought about by said intentionally deceptive and fraudulent representations. There are among the competitors of respondent 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 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. 5. The above alleged acts and practices of respondent are all to the injury and prejudice of the public and of respondent's 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 November 23, 1937, issued and served its complaint in this proceeding upon respondent, Gimbel Brothers, Inc., a corporation, charging it with the use of unfair methods of competition 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 fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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 said complaint and substitute answer, 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, Gimbel Brothers, 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 Thirty-third Street and Broadway, New York, in said State. It is now and for many years last past has been engaged in the business of operating a department store from which it sells and distributes women's wearing apparel and other allied products. It sells and has sold and distributed such articles of merchandise to members of the purchasing public 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 articles of merchandise, when sold, to be shipped from its place of business in New York, N. Y., 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 merchandise 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 individuals, firms, and partnerships engaged in the sale and distribution of women's wearing apparel and other allied products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 herein, respondent, in soliciting the sale of and selling such merchandise, caused, and now causes advertising matter to be inserted in newspapers having interstate circulation. In certain of said advertising matter, certain panties and vests manufactured to be worn by women were represented and referred to as "12½% to

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25% silk and wool panties." Attached to the said panties, sold and distributed as hereinabove set out, were labels bearing the following:

12½%

SILK AND WOOL

10% WOOL

Some of said garments contained at least the amount of silk and wool mentioned in said advertisement and on said labels but many others did not in fact contain silk or wool in any quantity or percentage whatsoever but were in fact devoid of both silk and wool. Said representations had the effect of misleading and deceiving the purchasing and consuming public into the mistaken and erroneous belief that the herein-described articles of merchandise actually contained the represented percentages of silk and wool, when, as above stated, they contained neither silk nor wool in any percentage or quantity whatsoever.

PAR. 3. The word "silk" for many years last past has had and still has 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. A substantial portion of the public and many purchasers of ladies' undergarments, including panties, prefer and desire to purchase undergarments which are made of cloth or fabric composed of wool and silk as distinguished from garments made of cloth or fabric composed of other materials.

The word "wool" for many years last past has had and still has in the mind of the consuming public, generally, a definite and specific meaning, to wit, fleece obtained from sheep. Wool products for many years have held and still hold great public esteem and confidence for their preeminent qualities and have been woven into a variety of fabrics noted for their quality of warmth, durability, and beauty. The various articles of wearing apparel and other articles designated, described, and referred to as "wool" have been for a long time, and at the present time still are, associated in the public mind with a fabric entirely made from the fleece of sheep.

PAR. 4. 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 and mistaken belief that such representations were true and to induce the purchase of such items of wearing apparel on account of such beliefs. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, indi-

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viduals, partnerships, and firms engaged in the sale of women's wearing apparel and other allied products in commerce as herein described 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 diverted unfairly to respondent from said competitors in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent as hereinabove found are all to the injury and prejudice of the public and of respondent's 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 by respondent admitting all the material allegations of the complaint to be true, but denying that the acts complained of were intentional, and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Gimbel Brothers, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of ladies' panties and vests and other like apparel in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. From representing, through labeling, branding, or advertising, or through any other means or device, or in any manner, that said articles or commodities are composed of or contain silk, wool, or other material, when such is not the fact;

2. From representing in any manner that any such article or commodity contains a greater percentage, proportion, or quantity of silk, wool, or any other fiber or material, than is actually contained therein.

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

WALTER JACKSON, DOING BUSINESS AS JACKSON
UNIVERSITY, JACKSON UNIVERSITY OF BUSINESS,
EDUCATIONAL FINANCE COMPANY, AND WORLD'S
DESIRE BUREAUCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3348. Complaint, Mar. 4, 1938—Decision, Dec. 7, 1938*

Where an individual engaged, under various trade names, in selling courses of instruction known as "combination secretarial and business administration" courses, consisting, respectively, of lessons in shorthand, typewriting, business English, and correspondence, and in bookkeeping, correspondence, salesmanship, business administration, accounting, and auditing, and available separately, and in maintaining both correspondence and residence school, and in soliciting purchasers for his said courses through so-called "registrars" or agents who called upon young men and women and their parents and guardians, and induced many to enroll and obligate themselves for said courses, and of whom substantial cash contract was required at time of purchase, and, as aforesaid engaged, in substantial competition with others selling and distributing similar courses of instruction in commerce among the various States and in the District of Columbia, and including those who truthfully represent the character of their organization and prices, terms, and conditions of offer and sale of their courses, and refrain from untruthfully representing that they will guarantee procurement of positions for students who have completed their courses, and who do not make use of fictitious firm names or in any other manner unfairly and untruthfully represent their methods of doing business—

- (a) Represented, through use of words "University" and "University of Business" as included in his trade names, to prospective students and parents or guardians, and to those enrolling, that his said school or business was a university or institution of higher learning, and, through contracts, circulars, advertising matter, and otherwise, that he operated night school as well as residence and correspondence school, and made available, or offered, to enrolled students services of so-called "World's Desire Bureau," letterhead of which set forth "The Wisdom, Knowledge, Experience of the World, at Your Command," facts being he did not and had not, for a number of years, operated night school, and the service of his so-called "World's Desire Bureau," original purpose of which was to perform certain services for members for annual fee or other compensation, apparently consisted in imparting to students such philosophy, advice, and general information deemed necessary by him, but usefulness and value of which was in fact doubtful and rather esoteric, and said "Bureau" did not represent separate and independent institute teaching wisdom, knowledge, and experience of the world or anything other than a medium of advertising his said school;
- (b) Represented, to prospective students, that they had been specially selected for an offer of enrollment in his courses because of their high scholastic standing, and that his agents were empowered to select such prospects and