

Complaint

IN THE MATTER OF

JULIUS LIPMAN, HERMAN LIPMAN AND SAMUEL LIPMAN, INDIVIDUALLY AND DOING BUSINESS AS LIPMAN BROTHERS

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

Docket 3494. Complaint, July 14, 1938—Decision, Dec. 7, 1938

Where a firm engaged in manufacture of dresses, including its so-called "Klassic Kool" garments, which had appearance and feel of silk but were in fact made from rayon, and in sale and distribution thereof to department and retail stores in the various States and in the District of Columbia—

Attached and caused to be attached to their said "Klassic Kool" garments tags and labels bearing said words and words "Pure Dye," and supplied to retailers, including retailer-purchaser by whom said garments were thus advertised and labeled, for retailers' use in attaching thereto, similar labels containing said words and retailer's name, without tagging, labeling, or otherwise distinguishing said products in such a way as to disclose their rayon composition, and thereby supplied means and inducement whereby retailers thereof might mislead and deceive consuming public into erroneous and mistaken belief that dresses in question were made of unweighted silk and not rayon;

With capacity and tendency to mislead and deceive substantial portion of purchasing and consuming public into mistaken and erroneous belief that products in question, labeled and designated as aforesaid, were composed of unweighted silk, as long associated in minds of substantial portion of such public with words "Pure Dye," and product of cocoon of silkworm, and not rayon, and of inducing such public, by reason of such representations and advertisements, to buy their said garments in mistaken and erroneous belief that they were composed as aforesaid and not of rayon, and with result that trade was thereby diverted unfairly to them from competitors selling similar silk or rayon products in commerce among the various States and who in no way misrepresent the nature, character, and quality of their respective garments:

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.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Julius Lipman, Herman Lipman, and Samuel Lipman, individually, and as co-partners, trading as Lipman Bros., hereinafter referred to as re-

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spondents, have violated the provisions of said act, and it appearing to the 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. Respondents, Julius Lipman, Herman Lipman, and Samuel Lipman, individually, and as copartners, trading under the firm name and style of Lipman Bros., with their office and principal place of business at 1400 Broadway, New York City, State of New York, are engaged in business as manufacturers of dresses which they sell and distribute to department stores and retail stores located in the various States of the United States and the District of Columbia.

Respondents cause, and during the time herein mentioned have caused, their said articles of merchandise, when sold, to be shipped from their place of business to the purchasers thereof located in the various States of the United States other than the State of origin of such shipments and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondents in their said product between and among the various States of the United States and the District of Columbia.

Respondents are now, and at all times herein mentioned have been, in substantial competition with other partnerships, and with corporations, firms and individuals engaged in the sale and distribution of dresses and other wearing apparel in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents attach or cause to be attached to said dresses, tags and labels bearing the words "Klassic Kool" and the words "Pure Dye," which dresses when sold to retail dealers are, and have heretofore been, resold to the purchasing and consuming public with said tags and labels attached thereto.

PAR. 3. Among such purchasers of said dresses from respondents is Ludwig Baumann, a New York corporation located at 500 Eighth Avenue, New York City, State of New York, which is engaged in the retail sale of dry goods and women's apparel.

In the course and conduct of its business in soliciting the sale of and selling said dresses in commerce, said Ludwig Baumann, a corporation, as aforesaid, caused advertising matter to be inserted in newspapers, wherein said dresses were represented, designated and referred to as "Pure Dye," to wit:

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LUDWIG BAUMANN

YOU'LL TRAVEL
LIGHT IN THISCool
Classic

7.98

The *perfect* summer dress, our smartest customers have said. It's a clear-cut, simple coat dress that will be chic and comfortable anywhere. The fabric itself deserves paeans of praise. A porous, uneven weave that lets the breeze in and resists creases. Pure dye, it will not shrink or pull at the seams, and will launder beautifully. * * *

Attached to said dresses when sold and delivered to the consuming public are tags and labels which were, and are, attached, or supplied to retailers to be attached thereto, by the respondents, reading as follows:

Ludwig Baumann

This garment is fashioned
from

Klassic Kool

Reg.

Pure Dye

Will not Shrink

or Pull at Seams

Made of

Eastman Yarn.

Respondents did not, and do not, tag or label or otherwise distinguish said dresses in such a way as to disclose the fact that they were, and are, composed of rayon, a fibre or material having the appearance and feel of silk, but tag and label them, and tagged and labeled them, as above stated. By so tagging and labeling said dresses the respondents supply the means and instrumentality whereby retailers thereof may, and the inducement for them to, mislead and deceive the consuming public into the erroneous and mistaken belief that said dresses are composed of silk and not of rayon.

PAR. 4. The word "silk" for many years last past had, and still has, in the minds of the purchasing and consuming public generally, a 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.

The words "Pure Dye" have been for a long time, and at the present time still are, associated in the minds of a substantial portion of the purchasing and consuming public with, and as being, unweighted

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silk, the product of the cocoon of the silk worm, and also with garments made therefrom: that is to say, said words are understood by a substantial portion of the purchasing and consuming public to refer to silk that has not been subjected to a metallic bath, resulting in the metallic substance or substances being permanently absorbed by the silk fiber.

PAR. 5. There are now, and have been at all times herein mentioned, competitors of respondents engaged in the business of selling and distributing silk and rayon fabrics and dresses, garments and other articles of merchandise made therefrom, in commerce between and among the various States of the United States and the District of Columbia, who do not misrepresent in any manner the nature, character, quality, or composition of such products offered for sale and sold by them.

PAR. 6. The use of the words "Pure Dye" on the labels attached to said dresses by the respondents, as hereinabove set forth, and the failure of the respondents to disclose the fact that said dresses were and are composed of rayon, a fiber or material having the appearance and feel of silk, and not of silk, the product of the cocoon of the silk worm, as aforesaid, by properly tagging or labeling, or otherwise distinguishing them as rayon, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing and consuming public into the mistaken and erroneous belief that said dresses were and are composed of unweighted silk, the product of the cocoon of the silk worm, and not of rayon, when in truth and in fact they were and are not composed of unweighted silk, but were and are composed of rayon.

On account of such representations, advertisements, and use of the said words "Pure Dye", and the failure to disclose the fact that said dresses were and are composed of rayon, the purchasing and consuming public have been, and are being, induced to purchase said dresses from respondents in the mistaken and erroneous belief that such dresses are composed of unweighted silk, the product of the cocoon of the silk worm, and thereby trade has been and is being, diverted unfairly to the respondents from their competitors referred to in paragraphs 1 and 5 hereof. As a result thereof injury has been, and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged are all to the 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 14, 1938, issued, and thereafter served its complaint in this proceeding upon respondents, Julius Lipman, Herman Lipman, and Samuel Lipman, individually, and as copartners, trading as Lipman Brothers, charging them and each of them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 17, 1938, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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. Respondents Julius Lipman, Herman Lipman, and Samuel Lipman, individually and as copartners, trading as Lipman Bros., have their office and principal place of business at 1400 Broadway, New York City, State of New York. They are engaged in business as manufacturers of dresses which they sell and distribute to department stores and retail stores located in the various States of the United States and in the District of Columbia.

Respondents cause, and during the time herein mentioned have caused, their said articles of merchandise, when sold, to be shipped from their place of business in New York to the purchasers thereof located in the various States of the United States other than the State of origin of such shipments and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade by said respondent in said dresses in commerce between and among the various States of the United States and in the District of Columbia.

Respondents are now, and at all times herein mentioned have been, in substantial competition with other partnerships, and with corporations, firms and individuals engaged in the sale and distribution of

dressess and other wearing apparel 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 their business as described in paragraph 1 hereof, respondents attach or cause to be attached to said dresses, tags and labels bearing the words "Klassic Kool" and the words "Pure Dye," which dresses when sold to retail dealers are, and heretofore have been, resold to the purchasing and consuming public with said tags and labels attached thereto.

PAR. 3. Among such purchasers of said dresses from respondents is Ludwig Baumann, a New York corporation located at 500 Eighth Avenue, New York City, State of New York, which is engaged in the retail sale of dry goods and women's apparel.

In the course and conduct of its business in soliciting the sale of and selling said dresses in commerce, said Ludwig Baumann, a corporation, as aforesaid, caused advertising matter to be inserted in newspapers, wherein said dresses were represented, designated and referred to as "Pure Dye." Said advertisement is as follows:

LUDWIG BAUMANN

YOU'LL TRAVEL

LIGHT IN THIS

Cool

Classic

7.98

The *perfect* summer dress, our smartest customers have said. It's a clear-cut, simple coat dress that will be chic and comfortable anywhere. The fabric itself deserves paeans of praise. A porous, uneven weave that lets the breeze in and resists creases. Pure dye, it will not shrink or pull at the seams, and will launder beautifully. * * *

Attached to said dresses when sold and delivered to the consuming public are tags and labels which were, and are, attached, or supplied to retailers to be attached thereto, by the respondents, reading as follows:

Ludwig Baumann

This garment is fashioned

from

Klassic Kool

Reg.

Pure Dye

Will not Shrink

or Pull at Seams

Made of

Eastman Yarn.

The garments so advertised and described are in fact made from rayon but have the appearance and feel of silk. Respondents did not, and do not, tag or label or otherwise distinguish said dresses in such a way as to disclose the fact that they were, and are, composed of rayon, a fiber or material having the appearance and feel of silk, but tagged and labeled them as above stated. By so tagging and labeling said dresses the respondents supply the means and inducement whereby retailers thereof may mislead and deceive the consuming public into the erroneous and mistaken belief that said dresses are composed of unweighted silk and not of rayon.

PAR. 4. The word "silk" for many years last past had, and still has, in the minds of the purchasing and consuming public generally, a 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.

The words "Pure Dye" have been for a long time, and at the present time still are, associated in the minds of a substantial portion of the purchasing and consuming public with, and as being, unweighted silk, the product of the cocoon of the silkworm, and also with garments made therefrom; that is to say, said words are understood by a substantial portion of the purchasing and consuming public to refer to silk that has not been subjected to a metallic bath, resulting in metallic substance or substances being permanently absorbed by the silk fiber.

PAR. 5. There are now, and have been at all times herein mentioned, competitors of respondents engaged in the business of selling and distributing silk and rayon fabrics and dresses, garments, and other articles of merchandise made therefrom, in commerce between and among the various States of the United States and in the District of Columbia, who do not misrepresent in any manner the nature, character, quality or composition of such products offered for sale and sold by them.

PAR. 6. The misleading statements and representations made by the respondents in connection with the sale of the aforesaid rayon dresses through use of the words "Pure Dye" to describe said garments and through failure to disclose the fact that said garments, though resembling silk in feel and appearance, were composed of rayon, have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing and consuming public into the mistaken and erroneous belief that said garments were and are composed of unweighted silk, the product of the cocoon of the silkworm, and not of rayon. On account of such repre-

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sentations and advertisements, the purchasing and consuming public has been induced to purchase respondents' garments in the mistaken and erroneous belief that such garments are composed of unweighted silk, the product of the cocoon of the silkworm, and that said garments are not composed of rayon. As a result thereof trade has been diverted unfairly to the respondents from their competitors selling similar silk or rayon garments in commerce among and between the various states of the United States who in no way misrepresent the nature, character, and quality of their respective garments.

CONCLUSION

The aforesaid acts and practices of respondents as herein found are all to the prejudice of the public and of 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 and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Julius Lipman, Herman Lipman, and Samuel Lipman, individually and as copartners, trading as Lipman Brothers, or under any other trade name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale and distribution of women's wearing apparel designated by the trade name "Klassic Kool" or any other apparel composed in whole or in part of rayon, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Using, assisting, or cooperating in the use of the words "Pure Dye," or any other word or words of similar import or meaning, to describe or designate fabrics or products which are not composed wholly of unweighted silk, the product of the cocoon of the silkworm.

2. Advertising, describing, branding, labeling, or otherwise repre-

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senting, rayon fiber or yarn or thread, strands of fabric made therefrom, (a) as not being rayon; or (b) as being something other than rayon; or (c) without clear and unequivocal disclosure that such material or product is rayon.

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

A. DE PINNA COMPANY, INC.

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

Docket 3565. Complaint, Aug. 30, 1938—Decision, Dec. 7, 1938

Where a corporation engaged in sale and distribution of women's wearing apparel, including certain dresses composed of silk, or product of cocoon of silk worm, as long definitely understood in minds of consuming public from word, and held in great public esteem and confidence in products thereof, and of chemical fiber or fabric, rayon, with appearance and feel of former and practically indistinguishable therefrom by purchasing and consuming public—

- (a) Represented to members of purchasing public, through designations "Silk/Rayon" or "Silk-and-Rayon" on labels attached to certain print dresses offered and sold by it, and in referring thereto in circulars mailed to customers and prospective customers, and in newspapers and other periodicals having general circulation in various States, that items thus designated were composed predominantly of silk, combined solely with rayon, facts being they were predominantly composed by weight of about 83 percent rayon, 9 percent silk and 8 percent cotton; and
- (b) Represented to purchasing public, through designations "Rayon-and-Silk" and "Rayon/Silk" in other advertising literature and on labels and price tags fixed to such garments, that same were composed predominantly of rayon combined with silk, facts being they were composed in part of cotton, in combination with other two substances;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and that garments in question were composed solely of silk and rayon in various predominant proportions described, and into purchase thereof as result of such erroneous and mistaken beliefs thus induced:

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

Mr. George W. Williams for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that A. De Pinna Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the 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, A. De Pinna Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws