

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

of the State of New York, with its office and principal place of business located at Fifth Avenue and Fifty-second Street in the city of New York, State of New York. Respondent now is, and for many years last past has been, engaged in the sale and distribution of women's wearing apparel. Respondent causes, and at all times 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, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise sold by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as mentioned in paragraph 1 hereof, respondent, in soliciting the sale of and selling certain of its products, including, among other items, Pinnella print dresses, attached to certain garments sold by it tags reading as follows:

Model: 75S605

Mat: Royal/White

Price \$15.95

The reverse side of the tag reads:

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Silk/Rayon.

In the course of the operation of its business as herein described and for the purpose of inducing the purchase of its merchandise, the respondent has caused certain of its merchandise, to wit, Pinnella print dresses, to be advertised in circulars mailed to its customers and prospective customers and in newspapers and other periodicals having an interstate circulation. In all of said advertising matter respondent has made various representations with respect to the character and quality of said garments. In such advertising literature respondent describes, designates, and refers to said garments as "silk-and-rayon."

Through use of the foregoing statements, as herein set out, the respondent represents to members of the purchasing public that such products so designated and described were, and are, composed predominantly of silk combined solely with rayon.

The aforesaid representations are false and misleading in that said garments so designated and described were not composed predominantly by weight of silk in combination solely with rayon. Such garments were in fact composed predominantly by weight of rayon, approximately 83 percent, with a much smaller amount by weight of silk, approximately 9 percent, and cotton, approximately 8 percent, respectively.

PAR. 3. In other advertising literature and on the labels and price tags affixed to such garments, respondent has designated and described said garments as "rayon-and-silk" and "rayon/silk."

Through use of the foregoing statements, the respondent represents to members of the purchasing public that such garments so designated and described were, and are, composed predominantly of rayon combined solely with silk. Said representations are false and misleading in that said garments so designated and described were not composed predominantly by weight of rayon in combination solely with silk, but were composed partly of cotton in combination with rayon and silk.

PAR. 4. The word "silk" 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, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk, and is by the purchasing and consuming public practically indistinguishable from silk.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to the character and content of said Pinnella print dresses has had, and now has a capacity and tendency to, and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and that said garments are composed solely of silk and rayon in the various predominant proportions herein described, and into the purchase of respondent's said merchandise as a result of such erroneous and mistaken beliefs induced by the aforesaid misrepresentations, acts, and practices of the respondent.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 August 30, 1938, issued and subsequently served its complaint in this proceeding upon respondent, A. De Pinna Co., Inc., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of

said act. On September 20, 1938 the respondent filed its answer in which it 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 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. Respondent, A. De Pinna Co., 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 Fifth Avenue and Fifty-second Street in the city of New York, State of New York. Respondent now is, and for many years last past has been, engaged in the sale and distribution of women's wearing apparel. Respondent causes, and at all times 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, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said merchandise sold by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, respondent, in soliciting the sale of and selling certain of its items of wearing apparel, including among other items Pinnella print dresses, attached to certain garments sold by it tags reading as follows:

Model: 75S605

Mat: Royal/White

Price \$15.95

The reverse side of the tags reads:

158

Silk/Rayon

In the course of the operation of its business, as herein described, and for the purpose of inducing the purchase of its merchandise, the respondent has caused certain of its merchandise, to wit: Pinnella print dresses, to be advertised in circulars mailed to its customers and prospective customers, and in newspapers and other periodicals having a general circulation in various States of the United States.

In all of said advertising matter respondent has made various representations with respect to the character and quality of said garments. In such advertising literature respondent describes, designates and refers to said garments as "Silk-and-Rayon."

Through the use of the foregoing statements on said labels and in said advertising matter, the respondent represented to members of the purchasing public that such items of wearing apparel so designated and described were composed predominantly of silk combined solely with rayon.

The aforesaid representations are false and misleading in that said garments so designated and described were not composed predominantly by weight of silk in combination solely with rayon. Such garments were, in fact, composed predominantly by weight of approximately 83 percent rayon with a much smaller amount of silk and cotton with approximately 9 percent silk and 8 percent cotton.

PAR. 3. In other advertising literature and on the labels and price tags affixed to such garments, respondent has also designated and described said garments as "Rayon-and-Silk" and "Rayon/Silk."

Through the use of the foregoing statements, the respondent represented to members of the purchasing public that such garments so designated and described were composed predominantly of rayon combined solely with silk. Said representations are false and misleading in that said garments so designated and described were not composed predominantly by weight of rayon in combination solely with silk, but were composed partly of cotton in combination with rayon and silk.

PAR. 4. The word "silk" 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, the product of the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence.

The word "rayon" is the name of a chemical fiber or fabric that simulates silk in that it has the appearance and feel of silk and is, by the purchasing and consuming public, practically indistinguishable from silk.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, advertisements, and representations with respect to the character and fiber content of said Pinnella print dresses has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and that said garments are composed solely of silk and rayon in the various predominant proportions herein described,

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Order

and into the purchase of respondent's said merchandise as the result of such erroneous and mistaken beliefs induced by such misrepresentations.

CONCLUSION

The aforesaid acts and practices of the respondent, A. De Pinna Co., Inc., are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, A. De Pinna Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of women's wearing apparel, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. The use, or from causing the use by others, of the words or terms "Silk/Rayon" and "Silk-and-Rayon," or any other words or terms of similar import and meaning, in any manner to describe or to designate cloth or fabric in the form of dresses or in any other form unless such cloth or fabric is composed predominantly by weight of silk combined solely with rayon.

2. The use, or from causing the use by others, of the words or terms "Rayon/Silk" or "Rayon and Silk," or any other words or terms of similar import and meaning, in any manner to describe or to designate cloth or fabric in the form of dresses or in any other form unless such cloth or fabric is composed predominantly of rayon combined solely with silk.

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.

Complaint

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IN THE MATTER OF
WALTER C. ELLY TRADING AS THE POSTAL COMPANY

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

Docket 3574. Complaint, Aug. 31, 1938—Decision, Dec. 7, 1938

Where an individual engaged in sale and distribution, among other things, of books and booklets dealing with fortune telling, dream interpretation, and kindred subjects, to members of the purchasing public in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of books, booklets, and other literature dealing with subjects like and similar to those for which he recommended use of his said products, and including those who do not in any manner misrepresent the nature, merit, and value of their said books, booklets, and literature and make any other false statements in connection with sale and distribution thereof—

Represented that such books and booklets would enable the reader thereof to solve accurately and truthfully their most intimate and personal problems, tell their fortunes, and interpret their dreams, and take the guesswork out of life, and correctly advise the readers thereof how to win a husband and what they could and could not do in order to obtain happiness and success in life, through such statements as "reveals the art of fortune telling by cards, dice, and dominoes," "sure guide to lucky dreams and lucky policy numbers," "how to win a husband—win the man you want," "* * * win him for yourself in spite of all obstacles. The simple clear directions in this book tell you how," etc., facts being they would not bring about such results, and said representations were grossly exaggerated, misleading, and untrue;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said false statements, representations, and advertisements were true, and that said books and booklets were effective in aiding the reader thereof to solve the problems of life as above set forth, and of causing substantial portion of such public, because of such erroneous and mistaken belief, to purchase substantial quantities of his said products, and of thereby diverting unfairly trade to him from his competitors in commerce who truthfully advertise and represent the merit and value of their books, booklets, and other literature:

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. Joseph C. Fehr 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 Walter C. Elly, an individual trading as The Postal Co., hereinafter referred to as