

Syllabus

IN THE MATTER OF
BLOOMINGDALE BROS., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3564. Complaint, Aug. 30, 1938—Decision, Feb. 9, 1939

Where a corporation engaged in operating a department store, and in selling therefrom, among other things, men's and women's wearing apparel to members of the purchasing public in the various States and in the District of Columbia, in substantial competition in commerce with others engaged in sale and distribution of such apparel made from silk, wool, rayon, cotton, and other fibers, and including those who do not misrepresent the nature, character or content of the articles of wearing apparel offered by them; in advertising its said apparel in newspapers of general circulation in various States—

- (a) Represented and described certain coats there offered as "all wool," notwithstanding fact such coats were not composed wholly of wool, or fleece, or hair of the sheep, as long definitely understood from word in minds of consuming public and associated, in coats thus described, with fabric entirely made from the hair or fleece of the sheep, and held in high esteem in products thereof for their preeminent qualities and qualities of warmth, durability, and beauty, but were composed of a mixture of wool and rayon;
- (b) Represented, as aforesaid, as "celanese, cotton, and 'Terry' polo shirts," certain garments thus offered, facts being said shirts were not composed of a mixture of celanese or rayon, of cotton, and cotton of the terry weave, but were composed, in case of some, wholly of rayon, in case of others wholly of cotton, and in case of still others wholly of cotton of so-called terry type of weave; and
- (c) Represented, as aforesaid, certain dresses thus offered as "Acetate Chiffon," notwithstanding fact said garments were not composed wholly of silk, as long associated in the public mind with word "chiffon" as designating dress goods and other similar products as made of said long, well and favorably known and highly esteemed product of the cocoon of the silk worm, but were made wholly of rayon;

With capacity and tendency to cause members of public, through association and meaning of words "wool" and "chiffon" as aforesaid, and inadequate understanding of words "celanese" and "acetate" as trade names of rayon manufacturer or rayon process used only in connection with rayon fabrics, to purchase such articles in erroneous belief that they were composed, as case might be, wholly of wool, of mixture of celanese, cotton, and cotton of terry type of weave, and of silk wholly, and to divert thereby trade to it from its competitors; to the injury of competition in commerce:

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.

Proskauer, Rose & Paskus, of New York City, for respondent.

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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 Bloomingdale Bros., Inc., hereinafter referred to as respondent, has 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. Respondent, Bloomingdale Bros., 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 Lexington Avenue and Fifty-ninth Street, in the city of New York, in said State.

Respondent is now, and for many years last past has been, engaged in the business of operating a department store from which it sells, among other things, men's and 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 the city of New York, State of New York, to 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 in commerce among and between the various States of the United States and in the District of Columbia.

Respondent is now, and has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of men's and women's wearing apparel made from silk, wool, rayon, cotton, and other fibers, 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 said wearing apparel, and for the purpose of inducement, caused certain advertising matter to be inserted in newspapers having an interstate circulation. In said advertisements and in other advertising matter certain coats were represented, designated, and referred to as "all wool"; certain polo shirts were represented, designated, and referred to as containing cotton in substantial amount; and certain dresses were represented, designated, and referred to as "chiffon."

Through use of such statements, designations, and representations, respondent represents to members of the public that such items of wearing apparel so advertised and offered for sale were "all wool" in the

case of the coats, that the polo shirts were composed in substantial part of cotton, and that the dresses were made of silk. The representations hereinabove set forth were false and misleading in that said items of wearing apparel so represented, designated, and referred to were not composed of "all wool" in the case of the coats, in substantial part of cotton in the case of the polo shirts, and of silk in the case of the dresses. The coats were in fact composed of a mixture of wool and spun rayon. The polo shirts were in fact composed entirely of viscose rayon, and the dresses were in fact composed of materials other than silk, to wit, rayon.

PAR. 3. The word "wool" for many years last past has had, and still has, in the minds of the consuming public generally a definite and specific meaning, to wit, fleece or hair 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 qualities of warmth, durability, and beauty. Coats and other items of wearing apparel designated, described and referred to as "all 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 hair or fleece of sheep.

The word "cotton" for many years last past has had, and still has, in the minds of the consuming public generally a definite and specific meaning, to wit: The product of the cotton plant. Cotton products hold, and for many years have held, great public esteem and confidence for their preeminent qualities. Cotton has long been used for the manufacture of shirts, and the quality of garments made therefrom is well known to the purchasing public for durability and generally fine wearing character.

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 have been applied to the fabrics resulting from different types of weaving. Dress goods and other similar products designated, described, or referred to as "chiffon" 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.

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

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the purchasing and consuming public practically indistinguishable from silk.

PAR. 4. There are among the competitors of the respondent herein, as mentioned in paragraph 1 hereof, those who do not misrepresent the nature, character, or content of the goods manufactured and offered for sale by them.

The use by respondent of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken beliefs that such statements and representations are true, and that the coats herein referred to were composed wholly of wool, that the polo shirts herein referred to were composed in substantial part of cotton and that the dresses herein referred to were composed of silk, and into the purchase of said respondent's products as the result of such erroneous beliefs. By the statements and representations aforesaid trade is diverted unfairly to respondent from such competitors referred to in paragraph 4 hereof. As the result thereof, injury is being done, and has been done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent 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 August 30, 1938, issued its complaint in the above-entitled proceeding and caused same to be served on the respondent, Bloomingdale Bros., Inc., charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. Thereafter, a stipulation as to the facts was made and entered into by and between W. T. Kelley, chief counsel for the Federal Trade Commission and Proskauer, Rose & Paskus, attorneys for said respondent, which stipulation was accepted and approved by the Commission on November 18, 1938. Said stipulation provided that the statement of facts contained therein may be made a part of the record herein and be taken as the facts in this proceeding in lieu of testimony in support of the charges stated in the complaint or in

opposition thereto; that the Commission may proceed upon said statement of facts (including inferences that may be drawn therefrom), to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding came on for final hearing before the Commission upon the complaint herein and the said stipulation as to the facts, and the Commission having duly considered the same and being 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, Bloomingdale Bros., 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 Lexington Avenue and Fifty-ninth Street, 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 operating a department store from which it sells, among other things, men's and women's wearing apparel. Respondent causes and at all times herein mentioned has caused its said merchandise to be sold and distributed 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 merchandise when sold to be transported from its place of business in the city of New York, State of New York, to purchasers thereof located in various States of the United States and in the District of Columbia. Respondent is now and has been for several years last past in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of men's and women's wearing apparel made from silk, wool, rayon, cotton, and other fibers.

PAR. 2. Respondent in the course and conduct of its business, as set out in paragraph 1 hereof, in soliciting the sale of and selling articles of wearing apparel, has caused advertisements to be published in newspapers of general circulation in various States of the United States, in which advertisements certain coats offered for sale by it were represented and described as "all wool," and certain polo shirts offered for sale by it were represented and described as "celanese, cotton, and 'Terry' polo shirts"; and certain dresses offered for sale by it were represented and described as "Acetate Chiffon."

PAR. 3. The word "wool" for many years last past has had and still has in the minds of the consuming public, generally, a definite and specific meaning, to wit: Fleece or hair 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. Coats and other items of wearing apparel designated, described, and referred to as "all 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 hair or fleece of sheep.

The word "cotton" for many years last past has had and still has in the minds of the consuming public, generally, a definite and specific meaning, to wit: The product of the cotton plant. Cotton products hold and for many years have held great public esteem and confidence for their preeminent qualities. Cotton has long been used for the manufacture of shirts and the quality of garments made therefrom is well known to the purchasing public for durability and generally fine wearing character.

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 have been applied to the fabrics resulting from different types of weaving silk. Dress goods and other similar products designated, described, or referred to as "chiffon" 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.

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.

The word "celanese" is not sufficiently understood by a substantial portion of the purchasing public to be identified as being a trade name of a rayon manufacturer used only in connection with certain rayon fabrics, to place said purchasers on notice that the fabrics and articles manufactured therefrom, so designated, are in fact rayon and not silk.

The word "acetate" is the name of a process in the manufacture of rayon but is not sufficiently understood by a substantial portion

of the purchasing public to be identified as a trade name or as a process for the making of rayon, and used only in connection with certain rayon fabrics, to place said purchaser on notice that the fabrics and articles manufactured therefrom, so designated, are in fact rayon and not silk.

The word "chiffon" has been for a long time and at the present time still is 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. 4. The coats represented and designated by respondent as "all wool," as set out in paragraph 2 hereof, were not composed wholly of wool but were composed of a mixture of wool and rayon; the polo shirts represented and designated by respondent as "celanese, cotton, and 'Terry' polo shirts," as set out in said paragraph 2, were not composed of a mixture of celanese (rayon), cotton and cotton of the terry weave, but some were composed wholly of rayon some wholly of cotton, and others were composed wholly of cotton of the so-called terry type of weave; and the dresses represented and designated by respondent as "acetate chiffon," as set out in said paragraph 2, were not composed of silk but were composed wholly of rayon and the use by respondent of such representations and descriptions of the articles of wearing apparel offered for sale by it, has the capacity and tendency to cause members of the public to purchase such articles in the erroneous belief that such coats were composed wholly of wool; that such polo shirts were composed of a mixture of celanese (rayon), cotton, and cotton of the terry type of weave; and that said dresses were composed wholly of silk.

PAR. 5. There are among the competitors of respondent herein as mentioned in paragraph 1 hereof those who do not misrepresent the nature, character, or content of the articles of wearing apparel offered for sale by them. The statements, designations, and representations made by respondent, as set out in paragraph 2 hereof, have the capacity and tendency to divert trade to respondent from its competitors and thereby injury is being done and has been done by respondent to competition in commerce as herein set out.

CONCLUSION

The acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the provisions 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 a stipulation as to the facts entered into by Proskauer, Rose and Paskus, attorneys for respondent herein, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Bloomingdale Bros., Inc., a corporation, 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 men's coats and shirts, women's dresses, and other articles of wearing apparel, and like products, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "wool" or any other word or words of like import or meaning, to describe or designate any fabric or product which is not composed wholly of wool, provided that in case of fabrics or products composed in part of wool and in part of rayon or materials other than wool, there is used in immediate connection or conjunction with the word "wool," in letters of at least equal size and conspicuousness, words truthfully describing or designating each constituent fiber or material thereof, in the order of its predominance by weight, beginning with the largest single constituent.

2. Using the word "chiffon," or any other word or words of similar import or meaning, such as "crepe," "satin," or "taffeta," to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless said descriptive word or words are used truthfully to designate the type of weave or construction, in which case such words shall be qualified by using in connection or conjunction therewith, in letters of at least equal size and conspicuousness, a word or words clearly naming or describing the fibers or materials from which said fabric or product is made.

3. Advertising, offering for sale, or selling fabrics or any other products composed in whole or in part of rayon without clearly disclosing the fact that such fabrics or products are composed of rayon, and when such fabrics or products are composed in part of rayon

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and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their 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
MILLER GROWERS ASSOCIATION ET AL.

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

Docket 3573. Complaint, Aug. 31, 1938—Decision, Feb. 9, 1939

Where a corporation and three individuals, associated with it as officers or otherwise, engaged, jointly and severally, in retail sale and distribution of citrus fruits to purchasers in various States and in the District of Columbia—

- (a) Represented and implied, through inclusion of words "Growers" and "Association" in corporate name of aforesaid concern, that they were the producers of citrus fruits offered and sold by them, and that said concern was an association of fruit growers;

Facts being they did not own or operate, either individually or jointly, any citrus grove in Florida or in any other State where such fruits were produced, and neither said concern nor said individuals, engaged under same name as trade name, were association of citrus fruit growers, but fruits offered and sold by them were purchased from local markets in the territories in which they operated; and

- (b) Represented to prospective purchasers that they were the owners of citrus fruit groves in Florida and prepared to deliver high-grade and fancy fruits to such purchasers through their own organization;
- (c) Represented, through one of their number, to stewards, dieticians or other purchasing agents of hospitals, or other institutions that such person was a grower in Florida and that the president or chairman of the board of trustees of the particular institution with which said person was negotiating had expressed the wish that such person receive an order for fruit; and
- (d) Represented, through one of their number, as aforesaid, to selected and prominent prospective customers whose credit was good and whose business relations were well known, that he was a friend of a friend of such particular prospective customer, mentioning some business associate or personal friend of latter in a distant city, and that such friend told person thus representing that friend felt sure prospective customer thus contacted and addressed would be interested in obtaining some of said person's de luxe fruits straight from the Florida grove.

Facts being, while on orders received from hospitals or other institutions they usually supplied fair-grade fruit priced near current market price, though ordinarily in several times amount ordered, in case of sales to individuals, medium- to poor-grade fruit, and, frequently, partly rotted, was, as a rule, delivered, and purchaser was billed for amount greatly exceeding market price for highest-grade fruit, and representations as aforesaid as to expressions by president or chairman of board desiring the giving of such an order, or as to wishes of supposed friend of prospective purchaser, were false and misleading, and officials or persons whose names were thus used had no knowledge whatever of such proposed transactions and had made no suggestions in regard thereto;