

IN THE MATTER OF
BONWIT TELLER, INC.

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

Docket 3499. Complaint, Sept. 17, 1938¹—Decision, Feb. 15, 1939

Where a corporation engaged in operation of department store from which it sold and distributed women's wearing apparel and other allied products to members of the purchasing and consuming public in the various States and in the District of Columbia, in substantial competition with others likewise engaged in such sale and distribution of such apparel and other products—

- (a) Designated and referred to certain slips, which it advertised in newspapers and periodicals of interstate circulation, and in advertising which it approved and agreed to, for insertion in newspapers by others for the benefit, profit and advantage of itself and others, as "satin," through statement "A gown of cotton lace over satin," without disclosure, in immediate connection and conjunction with said word, of said slips' rayon content, so as to apprise and inform purchasing public of such composition, and thereby represented to members of purchasing public that garments thus advertised and offered were made of silk, product of cocoon of silk worm, as long associated in public mind with word "satin," used to designate, describe or refer to dress goods and other similar products, and long held in high esteem for the preeminent qualities of products made therefrom; and
- (b) Advertised certain women's suits as being lined with "Silk Rayon Crepe," without disclosing, in connection therewith, that silk was weighted and not unweighted, and represented thereby to members of purchasing public that such linings consisted of a mixed fabric made up of predominant part of unweighted silk and rayon;

With effect of misleading and deceiving substantial portion of purchasing and consuming public into erroneous and mistaken belief that such representations were true, and of inducing purchase of such items of wearing apparel on account of such erroneous and mistaken beliefs thus brought about through such deceptive and false representations, and of unfairly diverting trade in commerce to it from competitors engaged in sale of similar apparel and other allied products and who do not misrepresent material of which apparel offered for sale or sold by them is composed; to the injury of competition in commerce:

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.

Paskus, Gordon & Hyman, of New York City, for respondent.

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Fed-

¹ Amended.

eral Trade Commission, having reason to believe that Bonwit Teller, 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, Bonwit Teller, 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-sixth Street, New York City, State of New York.

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 and consuming 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 City, State aforesaid, to the purchasers thereof located in the various States of the United States other than the said State of New York 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 respondent in said merchandise, sold by it in commerce between and among the various States of the United States, and in the District of Columbia.

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 and the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling such merchandise, caused, and now causes, advertising matter to be inserted in newspapers and magazines having an interstate circulation, and has approved and agreed to advertising matter being so inserted and circulated by others for the benefit, profit, and advantage of respondent and such others. In said advertising matter, certain "slips" worn by women were, and are, represented, designated, and referred to as "satin," said advertisement reading, in its material part as follows:

A gown of cotton lace over satin.

said word "satin" being used without being in any way qualified.

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Such statements and representations on the part of respondent serve as representations to members of the purchasing and consuming public that such garments so advertised and offered for sale were, and are, composed of silk.

In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling such merchandise, caused advertising matter to be inserted in newspapers and other publications having interstate circulation, and in so doing has advertised certain women's suits as being lined with "Silk Rayon Crepe," when there was, and is, no such material as silk rayon, and when, in fact, the lining was composed of weighted silk, without any indication in said advertisement that said lining was composed of weighted silk, and in the absence of such indication such statements and representations on the part of respondent serve as representations to members of the purchasing and consuming public that such garments so advertised and offered for sale were composed of unweighted silk.

The representations herein set forth were, and are, false and misleading, in that said garments so represented, designated, and referred to as "satin" were, and are, not composed of silk, but were, and are, composed of rayon, and such representations had, and have, the tendency and effect of concealing the fact that such "slips" were, and are, made of rayon, when it was, and is, the duty of respondent to make disclosure of the fact that such "slips" were, and are, composed of rayon, by using the word rayon in immediate connection and conjunction with such word "satin," in such a way and manner as to apprise and inform the purchasing and consuming public that such "slips" were, and are, composed of rayon; and in that said linings were not composed of an unweighted silk, but were, in fact, composed of weighted silk, without indicating that such lining was weighted by the use of the word "weighted" in connection with said advertisement, in such a way as to inform the members of the purchasing and consuming public that the same was weighted.

PAR. 3. The word "silk" for many years last past has had, and still has, in the mind of the purchasing and 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. Silk fiber has long been woven into a variety of fabrics. A variety of distinctive terms has been applied to the fabrics resulting from the different types of treatment and weaves of silk fiber. Dress goods and other similar products designated, described, or referred to as "satin," and other like words, when used alone, and until quali-

fied, designate or describe the materials from which the garment is made, and 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 silk worm, commonly known and understood by the purchasing and consuming public as silk.

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 use of the word "weighted" in connection with silk is meant silk that has been subjected to a metallic bath, resulting in a metallic substance or substances being permanently absorbed by the silk fiber.

PAR. 4. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that such representations were, and are, true; and has induced, and does induce, the purchase of such items of wearing apparel, on account of such erroneous and mistaken belief brought about by the use of said deceptive and false 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 or composed. By use of the representations aforesaid, trade in said commerce has been, and is being, 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 and the District of Columbia.

PAR. 5. The aforesaid acts and practices of the 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 September 17, 1938, issued and on September 21, 1938, served its amended complaint in this proceeding upon respondent Bonwit Teller, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 30, 1938, the

respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in this said complaint excepting that part of paragraph 2 of the complaint which charges that the words "Silk Rayon Crepe" serve as representations to members of the public that the garments they described were composed wholly of unweighted silk. Respondent 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. The respondent, Bonwit Teller, Inc., is a corporation, organized and 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-sixth Street, New York City, State of New York.

Respondent Bonwit Teller, Inc., 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. Said merchandise is sold and distributed, by respondent, to members of the purchasing and consuming public located in the various States of the United States and in the District of Columbia.

Respondent 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 the State of New York to the purchasers thereof located at various points in States of the United States other than the State from which said shipments are made and in the District of Columbia. Respondent maintains and has maintained a course of trade in commerce in said merchandise, sold by it between and among the various States of the United States and the District of Columbia.

Respondent is now, and has been, in substantial competition with other corporations and with individuals, firms, and partnerships likewise engaged in the business of selling and distributing women's wearing apparel and other allied products 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 its business as described in paragraph 1 hereof, respondent in offering for sale and selling its

merchandise caused advertising matter to be inserted in newspapers and magazines having an interstate circulation. Respondent also approved and agreed to the insertion of certain advertising matter in newspapers by others for the benefit, profit, and advantage of respondent and such others.

In said advertising matter, certain "slips" worn by women were represented, designated, and referred to as "satin," said advertisement reading in its material part as follows:

A gown of cotton lace over satin.

The word "satin" was used in said advertisements without being qualified in any manner.

The Commission finds that the use of the word "satin" in the manner aforesaid serves as a representation to members of the purchasing public that the garments so advertised and offered for sale were composed of silk.

Respondent also advertised certain women's suits as being lined with "Silk Rayon Crepe."

The Commission finds the use of the words "Silk Rayon Crepe" in the manner aforesaid serves as a representation to members of the purchasing public that the lining of the suits consisted of a mixed fabric made up of a predominant part of unweighted silk combined solely with rayon.

PAR. 3. The Commission finds that the above representations made by respondent in advertising these women's slips and suits were and are false, misleading, and untrue.

In truth and in fact said women's "slips" were and are not satin. The Commission finds that said slips were and are composed of rayon.

In truth and in fact the linings of said suits were and are not composed of unweighted silk and rayon. The Commission finds that the linings of the suits were composed wholly of weighted silk.

PAR. 4. The Commission finds that it was and is the duty of respondent to make disclosure of the fact that the "slips" respondent offered for sale and sold were and are composed of rayon by using the word "rayon" in immediate connection and conjunction with the word "satin," in such a way and manner as to apprise and inform the purchasing public that such slips were and are composed of rayon.

The Commission finds that it was and is the duty of respondent to make disclosures of the fact that said linings were not composed of an unweighted silk, but were, in fact, composed of weighted silk by the use of the word "weighted" in connection with said advertise-

ment in such a way as to inform the members of the purchasing public that the same was weighted.

PAR. 5. The word "silk" for many years last past has had, and still has, in the mind of the purchasing and 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. Silk fiber has long been woven into a variety of fabrics. A variety of distinctive terms has been applied to the fabrics resulting from the different types of treatment and weaves of fiber. Dress goods and other similar products designated, described, or referred to as "satin," and other like words, when used alone, and until qualified, designate or describe the materials from which the garment is made, and 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 purchasing and consuming public as silk.

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 use of the word "weighted" in connection with silk is meant silk that has been subjected to a metallic bath, resulting in a metallic substance or substances being permanently absorbed by the silk fiber.

PAR. 6. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that such representations were, and are, true; and has induced, and does induce, the purchase of such items of wearing apparel, on account of such erroneous and mistaken belief brought about by the use of said deceptive and false representations.

There are among the competitors of respondent, 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 or composed.

By use of the representations aforesaid, trade in said commerce has been, and is being, unfairly diverted to respondent from said competitors.

As a result thereof, injury is being, 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.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found 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.

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, except that part of paragraph 2 of the complaint which charges that the words "Silk Rayon Crepe" serve as representations to members of the public that the garments they describe were composed wholly of unweighted silk, 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, Bonwit Teller, 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 fabrics, ladies' wearing apparel and garments, and other like articles of merchandise, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "satin" or "crepe" 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 silkworm, unless such 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 immediate 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 product or fabric is made.

2. Using the words "silk rayon" to designate or describe any fabrics, wearing apparel, garments, or other like merchandise, provided, however, that in the case of mixed fabrics which contain silk and rayon, the fibers or materials of said mixed fabrics, wearing apparel, garments, or other like merchandise, shall be designated or described in the order of their predominance by weight beginning with the largest single constituent.

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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 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.

Syllabus

IN THE MATTER OF

FERRARA PANNED CANDY COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 3542. Complaint, Aug. 17, 1938—Decision, Feb. 15, 1939

Where a corporation engaged in the manufacture, sale, and distribution of candy, including assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof and which (1) were composed of a number of pieces of candy, together with push cards for sale and distribution of said pieces under a plan and in accordance with card's explanatory legend by which purchaser received, in accordance with particular basket ball legend disclosed by disk selected to be pushed by chance, pieces of candy ranging from 1 to 20, and (2) involved various push cards similar to that above described and varying therefrom in detail only, for sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme—

Sold and distributed to dealers such assortments for display and resale to purchasing public in accordance with aforesaid sales plan and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its candy in accordance with such sales plan involving game of chance or sale of a chance to procure additional pieces of candy without additional cost, contrary to an established public policy of the United States Government and in violation of the criminal laws and in competition with many who are unwilling to offer and sell their products so packed and assembled as above described or otherwise arranged and packed for sale to purchasing public so as to involve a game of chance or any other method contrary to public policy, and refrain therefrom;

With tendency and capacity to induce purchasers of its said candy to buy same in preference to that offered and sold by its competitors and with result that many dealers in and ultimate consumers of candy were attracted by its said method and manner of packing same and by element of chance involved in sale thereof as above described and were thereby induced to purchase substantial amounts of such candy thus packed and sold by it in preference to that offered and sold by its said competitors, who do not use such or equivalent sales plan or method, and with tendency and capacity, because of said game of chance, unfairly to divert trade and custom to it from its competitors who do not use such or equivalent methods, exclude from candy trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition in said trade, create a monopoly thereof in it and in such other distributors of candy as do use same or equivalent sales plan or method, deprive purchasing public of benefit of free competition, and eliminate from said trade all actual and exclude therefrom all potential competitors who do not adopt and use such plan or method:

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

Before *Mr. Charles F. Diggs*, trial examiner.

Mr. D. C. Daniel for the Commission.