

IN THE MATTER OF
STORYK BROS., INC.

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

Docket 3600. Complaint, Sept. 21, 1938—Decision, Feb. 16, 1939

Where a corporation engaged in sale and distribution of women's dresses and other wearing apparel for women, and in offer and sale, as thus engaged, under group trade name, of dresses and garments made wholly of silk, and also of those made in whole or in part of rayon, but with appearance and feel of silk, and in offering and selling, as thus engaged, its said products to purchasers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such dresses and apparel among the various States and in said District, and including many who sell and distribute such dresses and apparel without in any way misrepresenting the material of which their garments are made or the point of origin thereof, and who properly disclose the materials of which their said products are composed—

- (a) Described certain dresses, in their advertisements thereof under its said group trade name in newspapers and other publications of general circulation throughout the United States, as "crepe, storycord, and satin," and also thus described and referred to said garments under said trade name and in such advertisements and otherwise, as "crepes," "organdies," and "satins," without qualification of any character, and thereby represented, through use of words "satin" and "crepe" as aforesaid, long associated in minds of public with material of product of cocoon of silk worm, and highly esteemed as such and in the fabrics in which used for preeminent qualities thereof, that such dresses or garments were silk; and

- (b) Described in such advertisements, under said group trade name, and also on labels affixed to such garments, certain of its products thus offered as "imported" and as "celanese storycord" and "celanese fabric," and thereby represented, through use of terms aforesaid, directly and by inference, that all of its said products thus described, designated, and referred to were made of silk, product of cocoon of silk worm, and were imported;

Facts being, while some of garments described and designated as hereinabove set forth were made wholly of silk, product of cocoon of silk worm, long held, in products thereof, in great public esteem and confidence for their preeminent qualities, and associated with such products by words "satin" and "crepe," as used in connection with designation and description of women's dresses and other garments of wearing apparel, many of garments designated and described as aforesaid were not made of silk, but were made in whole or in part of rayon or other nonsilk materials, and none of garments aforesaid were imported, but were all domestically made in Puerto Rico, insular possession of United States;

With effect of misleading and deceiving, through such representations and intermingling of rayon and part-rayon garments, as above set forth, with garments made wholly of silk, substantial portion of purchasing public into belief that all of products aforesaid were composed of silk wholly, and

Complaint

of deceiving substantial portion of purchasing public, through such false and misleading statements and representations and failure to disclose rayon presence in garments in question, into erroneous belief that all of said representations were true, and that all of such garments, designated, described, and labeled as aforesaid, were made wholly and entirely of silk and were imported, and of placing in hands of retailers means and instrumentality with which to mislead and deceive substantial portion of purchasing public into such erroneous belief, and with result, by reason of such erroneous and mistaken beliefs, that number of consuming public bought substantial volume of its garments and trade was diverted unfairly to it from competitors who truthfully advertise their merchandise; to the substantial injury of competition in commerce among the various States and in said District:

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. James L. Fort for the Commission.

Leon & Weill, of New York City, for respondent.

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 Storyk Bros., 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, Storyk 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 at 135 Madison Avenue in the city of New York, State of New York.

Respondent is now, and for several years last past has been, engaged in selling and distributing women's dresses and other wearing apparel for women.

Respondent causes said merchandise when sold to be transported from its place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times herein mentioned has maintained a course of trade in said merchandise 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.

Complaint

28 F. T. C.

firms, and partnerships engaged in the sale and distribution of women's dresses and other wearing apparel for women 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 its aforesaid business, respondent, in soliciting the sale of and selling such merchandise in commerce as herein described, caused, and now causes, advertising matter to be inserted in newspapers and other publications having an interstate circulation. In certain of said advertisements respondent, under the group trade name "Everglade," has made various statements purporting to be descriptive of the nature, quality and character of its merchandise, among which are the following:

3 feature promotions, in crepe, storycord, and satin;
Crepe, storycord, and satin dresses.

Respondent has also caused said garments sold under the group trade name "Everglade" to be variously described and referred to in the aforesaid advertisements and otherwise as "crepes," "organdies," and "satins" without qualification of any character. Respondent also causes certain of the garments so sold under the group trade name "Everglade" to be described in said advertisements, on labels affixed to said garments and otherwise as "imported" and as "celanese storycord" and "celanese fabric."

All of said statements, together with similar statements appearing in respondent's advertising literature and on the labels affixed to its garments, purport to be descriptive of the nature of the material out of which said garments are made and of the place of origin of said garments. By use of said advertising literature and said labels describing said garments by use of the terms "celanese fabric," "celanese storycord," and "imported" and by other means, respondent has represented, directly and by inference, that all of its said garments so described, designated, and referred to are made of silk, the product of the cocoon of the silkworm, and that said garments are imported.

PAR. 3. The aforesaid representations made by respondent with respect to the materials out of which many of its garments are made and with respect to the place of origin of all of its garments are false, misleading, and untrue. The true facts are that some of said garments so described and designated are made wholly of silk, while many of such garments are not made of silk, the product of the cocoon of the silkworm, but are made in whole or in part of rayon or other materials which are not silk. None of said garments are imported but all are domestically manufactured in Puerto Rico, an insular possession of the United States.

PAR. 4. The word "silk" for many years has had, and still has, in the mind of the purchasing and consuming public generally, a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products have for many years 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 this type of treatment and weaving of silk fiber. The words "satin," "crepe," and "organdy" and other words of similar import and meaning have been for a long time, and still are, associated in the minds of the public with the materials made of the product of the cocoon of the silkworm. When such words are used in connection with the designation and description of women's dresses and other garments of wearing apparel, and are used alone and unaccompanied by the name of a specific fabric or fiber, they are considered by members of the purchasing public as being descriptive designations of silk fabrics.

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 public practically indistinguishable from silk.

Women's dresses and other wearing apparel imported into the United States are considered by a substantial portion of the purchasing public as having superior quality and greater value than similar dresses and other wearing apparel of domestic manufacture. For this reason there exists in the minds of a considerable portion of the purchasing public a preference for women's dresses and other wearing apparel which have been imported into this country over similar products of domestic manufacture. The use of the term "imported" in connection with the sale and distribution of women's dresses and other wearing apparel places the users thereof at a competitive advantage over competitors who do not so represent their respective products.

PAR. 5. Respondent offers for sale and sells certain dress and other garments which are made wholly of silk. Respondent also offers for sale and sells certain other dresses and garments which are made in whole or in part of rayon but which have the appearance and feel of silk and which are described and referred to as "storycord," "celanese storycord," and "celanese fabric." Both of these groups of garments are offered for sale under the general trade name "Everglade" and without any disclosure that one group of said garments is in fact made in whole or in part of rayon. The representations set out hereinabove and the intermingling of rayon and part-rayon garments in the manner hereinabove set out with the garments which are made

wholly of silk, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the belief that all of said garments are made wholly of silk.

PAR. 6. There are among respondent's competitors many who sell and distribute dresses and other wearing apparel for women who do not in any way misrepresent the material out of which their garments are made or the point or origin of said garments, and who properly disclose the materials out of which their garments are made.

PAR. 7. The use of the aforesaid false and misleading statements and representations by the respondent in describing its dresses and like garments as hereinabove set out, and the failure of respondent to indicate the presence of rayon in said garments as aforesaid, had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that all said garments designated, described, and labeled as aforesaid are made wholly and entirely of silk, and are imported garments. The use of said representations and statements by respondent also places in the hands of retail dealers a means and instrumentality with which to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are all made of "silk" and are imported garments. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's garments with the result that trade has been diverted unfairly to respondent from competitors who truthfully advertise their merchandise. As a consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. 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 the 21st day of September 1938, issued and, on September 22, 1938, served its complaint in this proceeding upon respondent, Storyk Bros., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 1, 1938, the respondent filed its answer, in which answer 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 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. The respondent, Storyk 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 at 135 Madison Avenue in the city of New York, State of New York.

The respondent is now, and for several years last past has been, engaged in selling and distributing women's dresses and other wearing apparel for women.

Respondent causes said merchandise when sold to be transported from its place of business in the State of New York to 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 at all times herein mentioned has maintained, a course of trade in said merchandise 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 likewise engaged in the business of selling and distributing women's dresses and other wearing apparel for women in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in soliciting the sale of and selling said merchandise, has caused, and now causes, advertisements to be inserted in newspapers and other publications having general circulation throughout the United States.

In certain of said advertisements respondent, under the group trade name "Everglade," has made various statements purporting to be descriptive of the nature, quality, and character of its merchandise, among which are the following:

- 3 feature promotions, in crepe, storycord, and satin;
- Crepe, storycord, and satin dresses.

Respondent has also caused said garments sold under the group trade name "Everglade" to be variously described and referred to in the aforesaid advertisements and otherwise as "crepes," "organ-dies," and "satins" without qualification of any character.

Respondent also causes certain of the garments so sold under the group trade name "Everglade" to be described in said advertisements, on labels affixed to said garments and otherwise as "imported" and as "celanese storycord" and "celanese fabric."

All of said statements, together with similar statements appearing in respondent's advertising literature and on the labels affixed to its garments, purport to be descriptive of the nature of the material out of which said garments are made and of the place of origin of said garments.

By use of said advertising literature and said labels describing said garments, by use of the terms "celanese fabric," "celanese storycord," and "imported" and by other means, respondent has represented, directly and by inference, that all of its said garments so described, designated and referred to are made of silk, the product of the cocoon of the silkworm, and that said garments are imported.

PAR. 3. The Commission finds that the representations made by respondent with respect to the materials out of which many of its garments are made and with respect to the place of origin of all of its garments are false, misleading, and untrue. In truth and in fact, while some of said garments so described and designated are made wholly of silk, many of such garments are not made of silk, the product of the cocoon of the silkworm, but are made in whole or in part of rayon or other materials which are not silk. The Commission further finds none of said garments are imported but all are domestically manufactured in Puerto Rico, an insular possession of the United States.

PAR. 4. The word "silk" for many years has had, and still has, in the mind of the purchasing and consuming public generally, a definite and specific meaning, to wit: The product of the cocoon of the silkworm.

Silk products have for many years 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 this type of treatment and weaving of silk fiber.

The words "satin" and "crepe," and other words of similar import and meaning have been for a long time, and still are, associated in the minds of the public with the materials made of the product of the

coöoon of the silkworm. When such words are used in connection with the designation and description of women's dresses and other garments of wearing apparel, and are used alone and unaccompanied by the name of a specific fabric of fiber, they are considered by members of the purchasing public as being descriptive designations of silk fabrics.

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 indistinguishable by members of the purchasing public from silk.

Women's dresses and other wearing apparel imported into the United States are considered by a substantial portion of the purchasing public as having superior quality and greater value than similar dresses and other wearing apparel of domestic manufacture. For this reason there exists in the minds of a considerable portion of the purchasing public a preference for women's dresses and other wearing apparel which have been imported into this country over similar products of domestic manufacture. The Commission finds that the use of the term "imported," in connection with the sale and distribution of women's dresses and other wearing apparel places the users thereof at a competitive advantage over competitors who do not so represent their respective products.

PAR. 5. The respondent offers for sale and sells certain dresses and other garments which are made wholly of silk. Respondent also offers for sale and sells certain other dresses and garments which are made in whole or in part of rayon but which have the appearance and feel of silk and which are described and referred to as "storycord," "celanese storycord," and "celanese fabric." Both of these groups of garments are offered for sale under the general trade name "Everglade" and without any disclosure that one group of said garments is in fact made in whole or in part of rayon.

The Commission finds that representations set out hereinabove and the intermingling of rayon and part-rayon garments in the manner hereinabove set out with the garments which are made wholly of silk, have the capacity and tendency to, and do, mislead and deceive a substantial portion of the purchasing public into the belief that all of said garments are made wholly of silk.

PAR. 6. There are among respondent's competitors many who sell and distribute dresses and other wearing apparel for women who do not in any way misrepresent the material out of which their garments are made or the point of origin of said garments, and who properly disclose the materials out of which their garments are made.

PAR. 7. The use by respondent of the false and misleading statements and representations herein found in describing its dresses and

Order

28 F. T. C.

like garments, and the failure of respondent to indicate the presence of rayon in said garments, had, and now has, the tendency and capacity to mislead and deceive, and does deceive, a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that all of said garments designated, described, and labeled as above found are made wholly and entirely of silk, and are imported garments.

The use by respondent of said representations and statements also places in the hands of retail dealers a means and instrumentality with which to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are all made of "silk" and are imported garments.

On account of these erroneous and mistaken beliefs, a number of the consuming public have purchased a substantial volume of respondent's garments with the result that trade has been diverted unfairly to respondent from competitors who truthfully advertise their merchandise.

As a result thereof, substantial injury has been done, and is now being 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 above found 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 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 stated that it waives all intervening procedure and further hearings as to the 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, Storyk Bros. Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution, of women's dresses and other wearing apparel for women, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "crepe," or "satin," 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 said descriptive word or words are used to designate the type of weave or construction, in which case such word or 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 fabric or product is made.

2. Using the word "imported" or any other word or term of similar import or meaning, to describe, designate, or refer to any cloth, fabric, or garment which has not been actually imported from a foreign country.

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.

4. Using the word "celanese," or any other trade-mark or trade name of an manufacturer of rayon, or any name indicative of any process of manufacturing rayon, to describe or designate any fabrics, garments, or other products made from materials other than rayon, and when such words may be properly used to describe, designate, or refer to fabrics, garments, or other products made from rayon, they shall appear in immediate conjunction with the word "rayon" in type of equal size and conspicuousness.

It is further ordered, That the respondent shall, within 60 days after the 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
**MARCUS A. WEINBERG AND BELLE WEINBERG TRADING
AS PACIFIC CHINA COMPANY, AND RAY Y. CLIFFE
TRADING AS PACIFIC CHINA COMPANY**

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

Docket 3385. Complaint, Apr. 21, 1938—Decision, Feb. 17, 1939

Where two individuals engaged, under trade name including words "Pacific China Company," and as officers of the business, in sale and distribution of earthenware products or "chinaware," together with so-called sales plan which included redeemable trade cards with numbers thereon ranging from 5 cents to 50 cents and totaling \$5, coupons, certificates, and bonds and other printed matter relating to said products, and a third individual similarly engaged under said trade name in sale of such "chinaware," sales plan, cards, etc., which were offered and sold to various retail selling enterprises under plan including so-called "Agreements of Co-Operation" under which they undertook, for a valuable consideration paid by the retail dealer signers thereof—

(1) To sell and distribute, and did sell and distribute, number of so-called punch cards, certificates, or bonds and display set of earthenware or so-called "chinaware," to be used by retailer as such in his place of business, and certain other advertising displays, catalogs, store signs, window cards, etc.; and

(2) To redeem said coupon cards for customer of retailer, following purchase of the \$5 worth of merchandise called for, and when punched out, upon the remitting of the card to them or through the dealer, together with payment of specified sum amounting to 81 cents, 91 cents, or 99 cents, as case might be, for their 10-piece dinner service or "Foundation Set" of "Pacific Chinaware," as described on their said cards and other literature, or for their 6-piece dinner service or "Starter Set," or so-called "Coronado Colored Pottery," with right in remitting customer to supplement and complete said sets by direct purchase from them at quoted list prices set-out in the catalogs which they distributed, either directly or through the dealer;

In soliciting of various retail selling enterprises in various States and in the District of Columbia, through salesmen employed and sent out by them, purchase of said chinaware and sales plans, in substantial competition in commerce as aforesaid with others engaged in sale and distribution of earthenware and chinaware products, and with sellers and distributors of so-called sales plans including redeemable cards, coupons, certificates, bonds, and literature relating thereto, and including many who do not in any manner misrepresent their products, plans, and aforesaid offers in connection therewith, and do not make any other false statements in connection with the sale and distribution of their products and sales plans—

(a) Represented in certain literature, advertising matter, banners, and displays which they caused to be placed in the hands of the aforesaid dealers in the various States and in said District, and to be thereby distributed and displayed through them to said dealers' customers, that the so-called chinaware sets being offered were free, and might be obtained without expense or