

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

Complaint

cost to persons participating in their said sales plan, facts being such sets of chinaware were not obtained free or without expense or cost by persons thus participating, but they were required to pay therefor in the manner and at the prices above described;

- (b) Represented, as aforesaid, that the offer being made by so-called Pacific China Co. to dealers handling such offer, and to customers of such dealers, was "An Introductory Offer" to introduce the products of said china company, and that the same was a "Special Offer" open for a limited time and for the purpose only of advertising such chinaware; facts being such offer was not made for such advertising or introductory purpose, and no special offer or opportunity was given or provided by them in connection therewith, but such offer constituted a part of their sales-promotion plan continuously employed by them in the course of their business aforesaid, and trading as "Pacific China Company"; and
- (c) Represented, as aforesaid, and as immediately above described, that such supposed china company was the manufacturer of the products which they were offering for sale and selling as aforesaid, facts being they were not the manufacturers thereof and did not own, operate, or maintain a plant in which said products were made;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, misrepresentations, and advertisements were true, and of causing, by reason of said erroneous and mistaken belief, substantial portion of such public, among whom there are a substantial number who prefer to buy direct from the manufacturer as affording them better prices, superior quality, more satisfactory service, and other advantages not obtainable through purchase through middleman, to undertake a program of purchasing merchandise from retail dealers aforesaid as a means of procuring their said products, and, further, to buy substantial quantities of their said products from them, and of misleading and deceiving also substantial number of retail dealers into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of causing substantial number of such dealers, because of such mistaken and erroneous belief, to purchase and participate in their said sales-promotional plan, and with result that trade was diverted unfairly to them from their competitors in said commerce who truthfully represent their respective merchandise, sales plans and offers in connection therewith; 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.

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Jay L. Jackson for the Commission.

Hickey, Hall & Junge, of Chicago, Ill., for respondents.

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 Marcus A. Weinberg and Belle Weinberg, individuals, and trading as Pacific China

Complaint

28 F. T. C.

Co., and as managing officers thereof, and Ray Y. Cliffe, an individual, and trading as Pacific China Co., and as an officer thereof, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Marcus A. Weinberg and Belle Weinberg, are individuals, trading as Pacific China Co., and officers in charge of the management and direction of the business of said company. Respondent Ray Y. Cliffe is an individual trading as the Pacific China Co. The office and principal place of business of said respondents is located at 812 South La Brae Avenue, in the city of Los Angeles, State of California. For more than 1 year last past the said respondents have been, and now are, engaged in the business of offering for sale, selling, and distributing in commerce among and between the various States of the United States earthenware products, described by respondents as "chinaware," together with a so-called sales plan, inclusive of redeemable cards, coupons, certificates, and bonds, and literature relating to said products. They have caused, and now cause, said merchandise and products, when sold or ordered, to be shipped and transported from their aforesaid place of business in California to buyers and purchasers thereof located in various States of the United States other than the State of California and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, respondents have been, and now are, in competition with other individuals and with corporations, partnerships, and firms engaged in the sale and distribution of earthenware and chinaware products, and also with sellers and distributors of so-called sales plans, inclusive of redeemable cards, coupons, certificates, and bonds, and literature relating thereto, who sell and distribute said merchandise and products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business aforesaid, it has been, and is, the practice of respondents to employ and send out salesmen to solicit individuals, firms, companies, corporations, and partnerships engaged in various retail selling enterprises who have direct contact with the purchasing public at large. The so-called "Agreements of Co-Operation" entailing the payment of a valuable consideration by signers thereto, are obtained from said members of the retail trades. For the consideration so paid and under said contracts, in the name of Pacific China Co., respondents agree to and

do sell and distribute to the said retailers, called dealers, a certain number of so-called punch cards and certificates or bonds at a stated consideration for each of said instruments, or at a stated consideration for a stated quantity of such instruments, together with a display set of earthenware, or so-called chinaware, to be retained as the property of the said dealer and to be used as a display in his place of business, together with certain other advertising displays and literature in the form of catalogs, store signs, window cards, etc.

The aforesaid cards on one side bear the printed name and address of the dealer and on the other side printed matter descriptive of the earthenware products offered in connection with said cards, and certain numbers ranging from 5 cents to 50 cents, totalling \$5, which are so arranged that they may be, and are, punched out in an amount corresponding with the amount of purchase made by the said dealer's customer from the said dealer. In accordance with respondents' selling plan, the said dealers distribute the said cards among their customers and otherwise invite the attention and interest of the said customers through and by means of the cards and literature supplied by respondents. When a customer of the dealer has purchased and paid for \$5 worth of the merchandise sold by the said dealer, and the said card has been punched out in that amount, the customer becomes entitled to redeem the said card for one of the so-called chinaware sets represented thereon, upon remitting the said card to respondents, or through the said dealer, together with the payment of a specified sum of money, in some cases being specified as 99 cents, and in others 81 cents and 91 cents.

The aforesaid earthenware is described on respondents' cards and other literature as "Pacific Chinaware." The choice of the dealers' customers upon the redemption of the said cards is described thereon (1) as "A Foundation Set" consisting of a 10-piece dinner service for 2 persons, or (2) as "A Starter Set" consisting of a 6-piece dinner service for 1 person, also described as "Coronado Colored Pottery." Dealers' customers remitting the specified amount and receiving such sets may and do supplement and complete the said sets by direct purchase from respondents at the quoted list prices set-out in the catalogs distributed to them by respondents either directly or through the dealer.

PAR. 4. In the course and conduct of business aforesaid, respondents have caused, and cause, certain literature, advertising matter, banners, and displays to be placed in the hands of the aforesaid dealers and through said dealers to be distributed and displayed to customers of said dealers, which, among other things, state and represent the following:

1. That the so-called chinaware sets being offered by the Pacific China Co. are "Free".
2. That the so-called chinaware offered and distributed by Pacific China Co. is "High Class," "High Quality," and "A Compliment to the Finest Home."
3. That the offer made by Pacific China Co. to the dealers handling the same and to customers of said dealers is "An Introductory Offer" for the purpose of introducing the products of Pacific China Co. and of "Pacific Chinaware," that the same is a "Special Offer," open for a limited time only, and for the purpose only of advertising "Pacific Chinaware."

The aforesaid statements and representations are false and misleading and have had, and have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and prospective purchasers of earthenware or chinaware, into the false and erroneous belief that the said statements and representations are true; that "Pacific Chinaware" may be obtained "Free" and without expense or cost, and that the same is "High Class" and of high or superior quality; that an offer of, and opportunity to obtain, "Pacific Chinaware" is being made for the purpose of advertising and introducing "Pacific Chinaware," and that the said offer and the catalog prices listed in connection therewith partake of the nature of a "Special Offer" or opportunity which is open for a limited time only. In truth and in fact, and contrary to said representations, the earthenware sets, or so-called chinaware, offered and distributed by respondents, cannot be obtained free or without expense or cost; the same is not high class or of high or superior quality, but is of low and inferior quality; the offer made is not for the purpose of advertising or introducing "Pacific Chinaware" and no "Special Offer" or opportunity is given or provided by respondents in connection therewith, but the said offer constitutes a part of the selling promotion plan continuously employed by respondents in the course of the business of Pacific China Co.

The aforesaid false and misleading statements and representations have the tendency and capacity to, and did and do, cause a substantial portion of the purchasing public and prospective purchasers of earthenware and chinaware, in reliance upon the aforesaid erroneous beliefs, to enter and undertake a program of purchasing from retail dealers, through whom the aforesaid offers are made, as a means of securing earthenware or so-called chinaware, more particularly the products of Pacific China Co., and further to purchase said products, all to the benefit and profit of respondents and the owners of said Pacific China Co., and to the injury of competitors.

PAR. 5. In the course and conduct of the business aforesaid, respondents further represent to the aforesaid dealers and to the purchasing public that the earthenware, or so-called chinaware, offered and sold in the name of Pacific China Co., is "High Class" and "High Quality"; that the offer made by respondents to said dealers, and the transaction in connection therewith, is for the purpose of "advertising" and "introducing" the products of Pacific China Co. It is the further practice of respondents to state and represent to said dealers and to the purchasing public that Pacific China Co. is the manufacturer of the products it offers and sells. The aforesaid statements and representations are false and misleading in that the earthenware, or so-called chinaware, offered and sold is of very low and inferior quality; the offer made and the transaction in connection therewith are not for the purpose of "advertising" or "introducing" the products of Pacific China Co., but constitute the method of sale and distribution regularly employed by respondents, and Pacific China Co. is not a manufacturer and does not manufacture the products which respondents offer and sell.

There are among the purchasing public a substantial number who prefer to purchase direct from the manufacturers of the products being purchased believing that in so doing they secure better prices, superior quality, more satisfactory service, and other advantages not obtainable in purchasing through middlemen.

PAR. 6. The aforesaid false and misleading representations on the part of respondents herein have the tendency and capacity to, and do, mislead and deceive many retail dealers into the false and erroneous belief that said representations are true and into participation in respondents' plan or merchandising in reliance on the truthfulness of such representations. The aforesaid false and misleading representations on the part of the respondents have the tendency and capacity to, and do, mislead and deceive many members of the purchasing public into the false and erroneous belief that said representations are true and into the purchase of respondents' earthenware or so-called chinaware in and on account of such beliefs induced as above set forth. As a result, the aforesaid false and misleading statements and representations on the part of respondents have the tendency and capacity to, and do, divert trade unfairly to the respondents and to said Pacific China Co. and owners thereof from competitors who truthfully represent their merchandise, sales plans, and offers in connection therewith. In consequence thereof injury is being done, and has been done, by respondents herein to competition in commerce among and between the various States of the United States and in the District of Columbia.

Findings

28 F. T. C.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

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 April 1938, issued, and on the 26th day of April 1938, served, its complaint in this proceeding upon respondents, Marcus A. Weinberg and Belle Weinberg, individuals, and trading as Pacific China Co., and Ray Y. Cliffe, an individual, and trading as Pacific China Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting material allegations of fact set forth in said complaint, and waiving all intervening procedure and further hearing as to the facts which were admitted in said answer, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, 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 respondents, Marcus A. Weinberg and Belle Weinberg, are individuals and prior to December 15, 1937, traded as the Pacific China Co. and were the officers in charge of the management and direction of the business of said company. The respondent Ray Y. Cliffe is an individual and prior to December 15, 1937, traded as the Pacific China Co. The respondents, during the times mentioned herein, had their office and principal place of business at 812 South LeBrae Avenue in the city of Los Angeles, State of California. The respondents, for a substantial period of time prior to December 15, 1937, and trading as the Pacific China Co., were engaged in the business of selling and distributing in commerce among and between the various States of the United States, earthenware products described by respondents as "Chinaware," together with a

so-called sales plan, inclusive of redeemable cards, coupons, certificates, and bonds and other literature relating to said products. The respondents caused the said products, sales plan, and other literature, when sold by them, to be transported from their aforesaid place of business in the State of California to the purchasers thereof at their respective points of location in the various States of the United States other than the State of California and in the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, the respondents, during all the times mentioned herein, were in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other individuals and with corporations, partnerships, and firms engaged in the sale and distribution of earthenware and chinaware products, and also with sellers and distributors of so-called sales plans, inclusive of redeemable cards, coupons, certificates, bonds, and literature relating thereto. Among such competitors in said commerce are many who do not and did not in any manner misrepresent their products, sales plans, and offers in connection therewith, and who do not and did not make any other false statements in connection with the sale and distribution of their products and sales plans.

PAR. 3. In the course and conduct of their business as aforesaid, it has been the practice of the respondents, during the times mentioned herein, to employ and send out salesmen to solicit individuals, firms, companies, corporations, and partnerships, situated in various States of the United States and in the District of Columbia, engaged in various retail selling enterprises. The respondents' so-called "Agreements of Co-Operation" entailing the payment of a valuable consideration by signers thereto, are obtained from said members of the retail trades. For the consideration so paid and under said contracts, in the name of Pacific China Co., respondents agree to and do sell and distribute to the said retailers, called dealers, a certain number of so-called punch cards and certificates or bonds at a stated consideration for each of said instruments, or at a stated consideration for a stated quantity of such instruments, together with a display set of earthenware, or so-called chinaware, to be retained as the property of the said dealer and to be used as a display in his place of business, together with certain other advertising displays and literature in the form of catalogs, store signs, window cards, etc.

The aforesaid cards on one side bear the printed name and address of the dealer and on the other side printed matter descriptive of the earthenware products offered in connection with said cards, and certain numbers ranging from 5 cents to 50 cents, totalling \$5, which

Findings

28 F. T. C.

are so arranged that they may be, and are punched out in an amount corresponding with the amount of purchase made by the said dealer's customer from the said dealer. In accordance with respondents' selling plan, the said dealers distribute the said cards among their customers and otherwise invite the attention and interest of the said customers through and by means of the cards and literature supplied by respondents. When a customer of the dealer has purchased and paid for \$5 worth of the merchandise sold by the said dealer, and the said card has been punched out in that amount, the customer becomes entitled to redeem the said card for one of the so-called chinaware sets represented thereon, upon remitting the said card to respondents, or through the said dealer, together with the payment of a specified sum of money, in some cases being specified as 99 cents, and in others 81 cents and 91 cents.

The aforesaid earthenware is described on respondents' cards and other literature as "Pacific Chinaware." The choice of the dealers' customers upon the redemption of the said cards is described thereon (1) as "A Foundation Set" consisting of a 10-piece dinner service for 2 persons, or (2) as "A Starter Set" consisting of a 6-piece dinner service for 1 person, also described as "Coronado Colored Pottery." Dealers' customers remitting the specified amount and receiving such sets may and do supplement and complete the said sets by direct purchase from respondents at the quoted list prices set-out in the catalogs distributed to them by respondents either directly or through the dealer.

PAR. 4. In the course and conduct of business aforesaid, respondents have caused certain literature, advertising matter, banners, and displays to be placed in the hands of the aforesaid dealers, situated in various States of the United States and in the District of Columbia, and through said dealers to be distributed and displayed to customers of said dealers, which, among other things, state and represent the following:

1. That the so-called chinaware sets being offered by the Pacific China Co. are "Free";

2. That the offer made by Pacific China Co. to the dealers handling the same and to customers of said dealers in "An Introductory Offer" for the purpose of introducing the products of Pacific China Co. and of "Pacific Chinaware," that the same is a "Special Offer," open for a limited time only, and for the purpose only of advertising "Pacific Chinaware."

Through the use of the statements and representations hereinabove set forth and others similar thereto, not herein set-out, all of which

purport to be descriptive of respondents' products and sales plan, the respondents have represented directly and by implication, among other things; that "Pacific Chinaware" may be obtained "Free" and without expense or cost to the persons participating in respondents' sales plan; that the offer of, and opportunity to obtain, "Pacific Chinaware" is being made for the purpose of advertising and introducing "Pacific Chinaware" and that the said offer and the catalog prices listed in connection therewith partake of the nature of a special offer or opportunity which is open for a limited time; and that the Pacific China Co. is the manufacturer of the said products which respondents offer to sell and sell as aforesaid.

PAR. 5. The aforesaid representations used and disseminated by the respondents in the manner above described, are grossly exaggerated, misleading, and untrue. In truth and in fact, the earthenware sets, or so-called "Pacific Chinaware," sold and distributed by the respondents as aforesaid, are not obtained free or without expense or cost by persons participating in respondents' said sales plan but such persons are required to pay for such products in the manner and at the prices hereinabove described. The offer of such products is not made for the purpose of advertising or introducing "Pacific Chinaware" and no "Special Offer" or opportunity is given or provided by respondents in connection therewith, but the said offer constitutes a part of the sales-promotion plan continuously employed by respondents in the course of their aforesaid business trading as Pacific China Co. The respondents are not the manufacturers of said products and do not own, operate, or maintain the plant at which said products are manufactured.

PAR. 6. During all the times mentioned herein there were, and are now, a substantial number of members of the purchasing public who prefer to purchase merchandise direct from the manufacturer thereof, believing that in so doing they procure better prices, superior quality, more satisfactory service, and other advantages not obtainable in purchasing merchandise through middlemen.

PAR. 7. The use by the respondents of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid with respect to said products and to said plan of merchandising, has had and now has the capacity and tendency to and does and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, misrepresentations, and advertisements were true, and caused a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to undertake a program of purchasing

Order

28 F. T. C.

merchandise from the aforesaid retail dealers as a means of procuring the respondent's said products and further to purchase substantial quantities of respondent's said products from the respondents.

The use by the respondents of the foregoing false and misleading statements, representations, and advertisements, has had and now has the capacity and tendency to and did mislead and deceive a substantial number of retail dealers into the erroneous and mistaken belief that such false statements, representations, and advertisements were true and caused a substantial number of such retail dealers, because of said erroneous and mistaken belief, to purchase and participate in respondents' sales-promotional plan. As a result, trade has been diverted unfairly to respondents from their competitors in said commerce who truthfully represent their respective merchandise, sales plans, and offers in connection therewith. In consequence thereof, injury has been done by respondents 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 respondents as herein found are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, and the answer of respondents, in which answer respondents admit the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said admitted facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Marcus A. Weinberg, Belle Weinberg and Ray Y. Cliffe, their representatives, agents, and employees, individually and directly, or trading as the Pacific China Co., or through any corporate or other device, in connection with the offering for sale, sale and distribution of earthenware or so-called chinaware products and so-called sales plans, inclusive of redeemable cards, coupons, certificates, bonds, and literature relating to said products, in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

1. Using the terms "free," "without cost," or any other terms of similar import or meaning, to describe, designate, or refer to products offered or delivered to holders of so-called "punch cards" or "certificates" in redemption thereof, where any part of the cost of the products is paid by such holders, and where all of the terms and conditions under which such products will be delivered to holders of such cards or certificates are not clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the terms "free," "without cost," or any other terms of similar import or meaning, and there is no deception as to the price, quality, character, or any other feature of such products.

2. Representing that the offer of any of said products is "introductory," or for the purpose of advertising and introducing the same, when in fact said offer is made for the purpose of selling the particular items or set of products included in said offer, and constitutes an offer regularly and continuously made and used in the course of offering for sale and selling said products.

3. Representing that the offer of any of said products, or any catalog prices listed in connection therewith, constitutes or partakes of the nature of a "special" offer or opportunity provided by respondents for a limited time only, when in fact the same constitutes an offer or prices regularly and continuously made or used in the course of offering for sale and selling said products.

4. Representing that the respondents or any of them are the manufacturers of the products sold by them, unless and until such respondents actually own and operate, or directly and absolutely control, a manufacturing plant wherein such products are manufactured by them.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
LOUIS D. LIVINGSTON ET AL., TRADING AS
L. D. LIVINGSTON & SONS

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

Docket 3627. Complaint, Oct. 8, 1933—Decision, Feb. 18, 1939

Where five individuals engaged in manufacture of women's wearing apparel, and in sale and distribution thereof to members of the purchasing public in various States and in the District of Columbia, in substantial competition with those engaged in similar sale and distribution of such products, and including many who do not in any way misrepresent the material of which their respective merchandise is made and do not make any other false statements in connection with sale and distribution thereof;

Described certain shirts thus offered and sold by them, on labels permanently attached thereto, as "Homespun Crepe—Pure Dye," and thereby represented that such wearing apparel was made of silk, product of cocoon of silk worm, products of which have long been held in great public esteem and confidence for their preeminent qualities and various fabrics of which have come to be designated by variety of distinctive terms, notwithstanding fact that such garments, thus labeled, were not made of silk, but were composed of rayon entirely, which, with appearance and feel of former, is practically indistinguishable therefrom by purchasing public;

With tendency and capacity, through use of word "crepe" as aforesaid, and such statement and representation and failure to disclose such rayon composition, to conceal fact that such merchandise was thus composed, and with effect of so concealing, and of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations were true, and that said merchandise was made of silk as aforesaid, and of causing substantial portion of such public to buy substantial quantities of their said merchandise, and with capacity and tendency so to mislead and deceive, and result of placing in hands of retail dealer purchasers of such apparel means and instrumentality whereby they might mislead and deceive said purchasing public into erroneous and mistaken belief that such merchandise was made wholly of silk, and effect of diverting thereby unfairly trade to them from their competitors in commerce who truthfully label and represent their merchandise; 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 and unfair and deceptive acts and practices in commerce.

Mr. James L. Fort for the Commission.

Mr. N. F. Presson and *Mr. Louis Casper*, of New York City, for respondents.