

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.

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 Louis D. Livingston, Arnold Livingston, Joseph A. Livingston, Norman Livingston, and Theodore H. Livingston, copartners, trading as L. D. Livingston & Sons, hereinafter referred to as respondents, have 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. Respondents, Louis D. Livingston, Arnold Livingston, Joseph A. Livingston, Norman Livingston, and Theodore H. Livingston, are members of a partnership trading as L. D. Livingston & Sons, and have their office and principal place of business at 132 West Thirty-sixth Street in the city of New York, State of New York.

PAR. 2. The respondents are now, and have been for more than 2 years last past, engaged in the business of manufacturing, selling, and distributing women's wearing apparel. Respondents sell said products to members of the purchasing public situated in various States of the United States and in the District of Columbia and cause the said products, when sold by them, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States in the United States, other than the State of New York, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said products among and between various States of the United States and the District of Columbia.

PAR. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other partnerships and with corporations, individuals, and firms selling and distributing women's wearing apparel. Among such competitors in said commerce are many who do not in any manner misrepresent the material out of which their products are made and who do not make any other false statements in connection with the sale and distribution of their said products.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their women's wearing apparel, the respondents have caused false advertisements containing representations and claims with respect to the material out of which such

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garments are made to be disseminated in commerce as defined in the Federal Trade Commission Act through the use of permanent labels placed by respondents on such garments, on which labels are statements purporting to be descriptive of the nature, quality, and character of such merchandise, among which is the following:

Hollyvogue
Mannish-Tailored
Shirt Washable
Homespun Crepe—Pure Dye

PAR. 5. Through the use of statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of such garments and of the material of which they are made, respondents have represented directly and by implication, among other things, that the garments are made of silk, the product of the cocoon of the silkworm.

PAR. 6. The representations made by respondents with respect to the materials out of which the garments are made are false, misleading, and untrue. In truth and in fact, the said garments are not made of silk, the product of the cocoon of the silkworm.

The true facts are that said garments are made entirely of rayon.

The representations above set forth were, and are, false and misleading in that said garments so represented, designated, and referred to were not described as being rayon, and in that the word "rayon" was not used in said labels with said descriptive words and representations. Such representations, together with the failure to so describe the materials of which said garments were made, had and have the tendency, capacity, and effect of concealing the fact that such garments were and are made of rayon when it was, and is, the duty of the respondents in any circumstances to make disclosure of the fact that such garments were, and are, composed of rayon by the use of the word "rayon" in immediate connection with said descriptive words and in such a way and manner as to apprise and inform the purchasing and consuming public that such garments were and are composed wholly of rayon.

PAR. 7. The word "silk" for many years last past has had, and still has, in the minds of the purchasing and consuming public generally, a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products for many years have held and still hold great public esteem and confidence 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 treatment and weaving of silk fiber. The words

"pure dye" and "crepe" or words of similar import or meaning, when used alone or unaccompanied by the name of a specific fabric or fiber in connection with the designation or description of wearing apparel for women, 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 and such words, when used as aforesaid, are considered as being descriptive 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.

PAR. 8. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid with respect to said garments, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and that said garments are made of silk of the product of the cocoon of the silkworm and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' said garments. The use of said representations and statements also placed in the hands of the retail dealers a means and instrumentality whereby they mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said garments are made wholly of silk. As a result trade has been diverted unfairly to the respondents from their competitors in said commerce, who truthfully label and represent their garments as described in paragraph 3. In consequence thereof injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and District of Columbia.

PAR. 9. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 8th day of October 1938, issued, and subsequently served, its complaint in this proceeding upon respondents, Louis D. Livingston, Arnold Livingston, Joseph A. Liv-

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ingston, Norman Livingston and Theodore H. Livingston, copartners, trading as L. D. Livingston & Sons, charging them 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. 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 all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, 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. Respondents, Louis D. Livingston, Arnold Livingston, Joseph A. Livingston, Norman Livingston, and Theodore H. Livingston, are members of a partnership trading as L. D. Livingston & Sons, and having their office and place of business at 132 West Thirty-sixth Street in the city of New York, State of New York.

PAR. 2. The respondents are now and have been for more than 2 years last past engaged in the business of manufacturing, selling, and distributing women's wearing apparel. Respondents sell said merchandise to members of the purchasing public situated in various States of the United States and in the District of Columbia, and cause said merchandise, when sold by them, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States other than the State of New York and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are engaged in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with other partnerships, and with corporations, individuals, and firms selling and distributing women's wearing apparel. Among such competitors in said commerce are many who do not in any manner misrepresent the material out of

which their respective merchandise is made, and who do not make any other false statements in connection with the sale and distribution of their respective merchandise.

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their said women's wearing apparel, the respondents have caused false advertisements containing representations and claims with respect to the material out of which such merchandise is made, to be disseminated in commerce among and between the various States of the United States and in the District of Columbia through the use of permanent labels affixed by respondents to such merchandise, on which labels are statements purporting to be descriptive of the material, quality, and character of such merchandise, among which statements are the following:

Hollyvogue

Mannish-Tailored

Shirt Washable

Homespun Crepe—Pure Dye

PAR. 5. 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 the said women's wearing apparel and of the material of which such merchandise is made, respondents have represented, directly and by implication, among other things, that such merchandise is made of silk, the product of the cocoon of the silkworm.

PAR. 6. The aforesaid representation by the respondents that said wearing apparel is made of silk, the product of the cocoon of the silkworm, is false, misleading, and untrue. In truth and in fact the said merchandise is not made of silk, the product of the cocoon of the silkworm. Said merchandise is made entirely of rayon.

PAR. 7. The word "silk" for many years last past has had, and now has, in the minds of the purchasing and consuming public situated in various States of the United States and in the District of Columbia a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products for many years have held and now 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 treatment and weaving of silk fabrics.

The words "Pure Dye" and "Crepe" and words of similar import and meaning, when used either alone or unaccompanied by the name of a specific fabric or fiber, to describe wearing apparel for women

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have caused, and now cause, members of the purchasing public to have the understanding and belief that the merchandise so described is made of silk, the product of the cocoon of the silkworm. The words "Pure Dye" and "Crepe," used and disseminated as aforesaid, have the capacity and tendency to, and do cause members of the purchasing public to have the erroneous and mistaken belief that respondents' said merchandise is made of silk, the product of the cocoon of the silkworm.

PAR. 8. The said statements and representations used and disseminated by the respondents as aforesaid are false and misleading for the reason that respondents' merchandise, represented and labeled as "Crepe," is not described as being made of rayon, and the word "rayon" is not placed on said labels in connection with the use of the aforesaid statement and representation. The use by respondents of said statement and representation, and the failure by the respondents to disclose the fact that said merchandise is made of rayon has the tendency, capacity, and effect of concealing the fact that such merchandise is made of rayon.

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 practically indistinguishable from silk by the purchasing public.

PAR. 9. The use by respondents of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, with respect to said women's wearing apparel has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and that such merchandise is made of silk, the product of the cocoon of the silkworm, and causes a substantial portion of the purchasing public because of said erroneous and mistaken belief to purchase substantial quantities of respondents' said merchandise.

The use of said statements and representations also places in the hands of retail dealers to whom respondents sell and distribute such merchandise, a means and instrumentality whereby said dealers mislead and deceive the purchasing public into the erroneous and mistaken belief that said merchandise is made wholly of silk. As a result, trade has been diverted unfairly to respondents from their competitors in said commerce, who truthfully label and represent their merchandise. In consequence thereof, injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice and injury of the public and of respondents competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and future hearings as to the said 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, Louis D. Livingston, Arnold Livingston, Joseph A. Livingston, Norman Livingston, Theodore H. Livingston, individually and trading as L. D. Livingston & Sons, or trading under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of women's 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 term "pure dye," or any other term of similar import or meaning, to describe or designate any fibers, fabrics, or other products which are not composed wholly of unweighted silk, the product of the cocoon of the silk worm.

2. Using the word "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 silk worm, 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.

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,

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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 respondents shall within 60 days after the 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.

Syllabus

·IN THE MATTER OF
EL MORO CIGAR COMPANY

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

Docket 2603. Complaint, Oct. 31, 1935—Decision, Feb. 21, 1939

Where a corporation engaged in the manufacture of various brands of cigars, and in sale and distribution thereof to wholesale and retail dealers in various States for resale to members of the purchasing public, in substantial competition with others engaged in similar sale and distribution of cigars, and including among said competitors thus engaged (1) many who sell such products composed in whole, and also such products composed in part, of Havana tobacco, and truthfully advertise, represent, brand, and label their said products as containing such tobacco; (2) many who sell and distribute such products containing none of such tobacco, but only tobacco grown in the United States or elsewhere than on the Island of Cuba and do not brand, label, advertise, or otherwise represent their said products as containing any tobacco grown on said island; and (3) those who thus sell and distribute cigars which, by reason of imperfections in shape, size, or other respects, are culled or removed from lots of higher grade and more expensive cigars and, by reason of their odd shapes, sizes, and other imperfections, are correctly designated as "Throw Outs" or by other words of similar import, and sold at materially reduced prices, and are truthfully advertised, branded, and labeled by them as aforesaid—

(a) Branded or labeled as "Havana Counts" certain of its said cigars and featured said words on the exterior and on the interior of the containers thereof, and also displayed on exterior of such containers, and on the inside of the lids thereof, words "Original Old Style" and "Guaranteed Hand Made Imported and Domestic Stock," and later discontinued said last-named phrase and placed on top and sides of exterior of its said containers, in much smaller type than "Havana Counts," words "Domestic Filler Domestic Wrapper," and thereafter discontinue also, on inside of lid of containers, phrase referred to and inserted, in much smaller type than words "Havana Counts," "Notice! These cigars are made in the United States entirely and only of domestic tobacco," facts being none of the cigars made, sold, and distributed by it under aforesaid "Havana Counts" label at any time contained any Havana tobacco or tobacco grown on island of Cuba, long imported into the United States and there widely used in manufacture of cigars, and long associated by word "Havana" with tobacco grown on said island, on which, and in vicinity of Havana, is grown finest cigar tobacco, and notice aforesaid was contradictory and inconsistent with representation contained in use of word "Havana" and did not place purchasers of product in question on notice or sufficiently inform them that such products were not made from and did not contain Havana tobacco, but were made only and entirely from the domestic product, with effect of misleading and deceiving substantial portion of members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief, through use as aforesaid of word "Havana" and words "Guaranteed