

IN THE MATTER OF
**CHARLES W. CROMER DOING BUSINESS AS SHALWIN
HOSIERY MILLS**

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

Docket 2794. Complaint, Apr. 30, 1936—Decision, Feb. 27, 1939

Where an individual engaged in manufacture of hosiery which had appearance and feel of silk but which was composed largely of rayon and cotton, and in sale and distribution thereof to purchasers in various other States, in substantial competition with those engaged in sale and distribution of hosiery of same type, kind, and grade and of various other types, kinds, and grades, and including those who do not represent, brand, label, advertise, or describe their said product falsely or deceptively and do not represent that their said product contains more silk than is in fact present therein—

- (a) Caused to be stamped on two types of his said hosiery, words "PURE THREAD SILK," together with words, on one of said types, "Reinforced with Art Silk," and words, on the other, "Reinforced with Fine Rayon," and placed on both types label setting forth, in part, "New Style Split Foot Silk Hose are made of the finest materials," etc., and represented thereby, directly and by implication, to members of the purchasing public, that such hosiery contained silk, product of the cocoon of the silk worm, as the principal or major constituent therein, and contained said product in a proportion or quantity larger than that present in said hosiery, top, heel, toe, and sole of which were made of cotton, and body of which, designated by term "PURE THREAD SILK" as aforesaid, was composed of 87 percent rayon and 13 percent silk, with percentage of silk in whole hose amounting to only 3 percent thereof by weight;
- (b) Caused to be stamped on another type of hose sold and distributed by him words "Rayon reinforcing Two THREADS PURE SILK," with said last four words in large conspicuous type and first words in small and less conspicuous type, and thereby represented, directly and by implication, to members of the purchasing public in various States as aforesaid, that such hosiery contained silk as aforesaid as principal or major constituent therein, and also in proportion or quantity larger than that of rayon present in said product, top, heel, toe, and sole of which were made of cotton, with body thereof, stamped with words "Rayon Reinforcing Two THREADS PURE SILK," containing approximately 60 percent rayon and 40 percent silk;

With result of thereby placing in the hands of dealers means or instrumentality of deception and fraud whereby they were enabled, aided, and assisted in misleading and deceiving members of the purchasing public as to the contents of said hosiery and the quality, value, grade, and substance thereof; and

- (c) Caused to be stamped on substantial number of said hose words "50¢ per pair," and represented thereby that said price was customary and ordinary retail value thereof, facts being it was fictitious and much higher than that at which it was customarily offered for sale and sold at retail;

With effect of misleading and deceiving members of purchasing public in the various States into the erroneous and mistaken belief that such false and misleading statements and representations were true, and that said hosiery contained silk as above set forth, and of causing members of such public to purchase substantial quantities of said hosiery because of such erroneous and mistaken belief and of thereby diverting unfairly trade to him from competitors in said commerce who truthfully advertise and represent their respective hosiery and materials contained therein; 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.

Before *Mr. W. W. Sheppard* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Harry D. Michael and *Mr. William L. Pencke* for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Charles W. Cromer, doing business under the name and style of Shalwin Hosiery Mills, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said 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. That said respondent, Charles W. Cromer, doing business under the name and style of Shalwin Hosiery Mills, is now and has been engaged for more than 3 years last past, under said trade name, in the manufacture of hosiery and in the sale and distribution thereof in commerce, as herein set out, with his factory or mill, office, and principal place of business in the city of Hagerstown, in the State of Maryland. Said respondent, in the course and conduct of his said business, causes the hosiery, manufactured and sold by him, to be transported from his said place of business in Maryland to, into, and through States of the United States other than Maryland to various and numerous customers in such other States to whom such hosiery is or has been sold. Respondent's usual course of dealing is to sell his hosiery to jobbers, wholesalers, and retail dealers through whom or which it is in turn sold to members of the consuming public.

PAR. 2. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the manufacture, sale, and distribution of

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hosiery of the general type, kind, and grade as that made and sold by respondent as hereinafter described, as well as other types, kinds, and grades of hosiery, and such other individuals, firms, and corporations have caused and do now cause their said hosiery, when sold by them, to be transported from the various States of the United States where they are located to, into, and through States other than the State of origin of the shipment thereof to the purchasers thereof at their respective places of location. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said hosiery with such other individuals, firms, and corporations.

PAR. 3. That one of the types of men's hosiery made and sold by respondent is made of cotton so far as the top, heel, toe, and sole are concerned while the remaining part thereof is made of a mixture of rayon and silk, each thread consisting of approximately 60 percent rayon and 40 percent silk. The percentage of silk in said hosiery is only a small fraction of the whole. Respondent, in the sale of said hosiery as aforesaid, causes to be stamped thereon the following statement:

Rayon
Reinforcing
TWO THREADS PURE SILK

The words "Two Threads Pure Silk" are stamped in large conspicuous type while the word "Rayon" is in smaller and less conspicuous type. The effect and implication of said statement, as so printed, is to create the false impression on the purchasing public that said hosiery is composed in substantial part of silk.

PAR. 4. That, during said period as aforesaid, but prior to the use of the transfer stamp as stated in the preceding paragraph, respondent stamped such hose as therein described as follows:

PURE THREAD SILK
Reinforced
With Fine Rayon
Made in U. S. A.

On a label or tag attached to the top of some such hose, the following statement appeared:

SHALWIN
New Style Split-Foot
—SILK HOSE—
Are made of the finest
Materials and will
give the wearer
complete satisfaction

Another type of transfer stamp formerly used by respondent on socks made as aforesaid was the following:

DURENE TOP AND FOOT

First Quality Rayon

Reinforced with

Two Threads Pure Silk

Made in U. S. A.

Such hose so stamped also had attached thereto labels or tags with the wording thereon as last above described.

That, at one time within the period as aforesaid, respondent manufactured and sold as aforesaid a type of hose of the same general type as above described, but with a silk content of only about 13 percent exclusive of the top, heel, toe, and sole. Said type of hose, and also that previously described, were stamped with a transfer stamp as follows:

Pure Thread Silk

Reinforced

With Art Silk

Made in U. S. A.

and also

Pure Thread Silk

Reinforced

With Fine Rayon

Made in U. S. A.

That the said representations imply and import that the major portion of said hosiery is made from silk, the same being the product of the cocoon of the silk worm, or that the major portion of the parts of such hosiery so stamped and described is made from silk, and that the rayon content so designated constitutes a relatively small part of each piece of such hosiery or of the part thereof so designated, when, in fact the major portion of each piece of such hosiery as well as of such portions thereof as contain silk are made of material or materials other than silk.

PAR. 5. That, in many instances in the sale of his said hosiery above described, respondent has caused to be stamped upon such hose the following price mark as the retail price at which such hose is and should be sold, to wit:

50¢ per pair

when, in truth and in fact such price was fictitious and much higher than hose of the quality and price at the factory would warrant and higher than the retail prices at which such hose has customarily been offered for sale and sold.

PAR. 6. That the representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said hosiery is composed in large part or wholly of silk, the product of the cocoon of the silk worm, and that it is of a quality and price higher than it is in fact and to cause and induce such members of the public to buy said hosiery because of the erroneous beliefs engendered as above set forth. Said stampings and statements placed upon and attached to said hosiery further place in the hands of retail dealers, who handle and sell the same, an instrument of fraud and deceit by means of which they may mislead and defraud the purchasing public. Said practices of respondent also have the tendency and capacity to divert trade to respondent from competitors engaged in the sale in interstate commerce of hosiery of the same or similar grade and kind as well as that made wholly of silk. There are among the competitors of respondent those who in no wise make the same or similar misleading representations as made by respondent as herein set out and who truthfully and accurately state the quality of their merchandise, the materials of which it is made and the normal price at which it should be sold at retail. As a result thereof, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 30, 1936, issued and served its complaint in this proceeding upon respondent, Charles W. Cromer, trading as Shalwin Hosiery Mills, charging him 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 respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, and in opposition to the allegations of the complaint by respondent, before W. W.

Sheppard and Miles J. Furnas, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent not having filed brief and oral argument not having been requested), 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. Respondent, Charles W. Cromer, is an individual trading and doing business as Shalwin Hosiery Mills and having his office and principal place of business in the town of Hagerstown, State of Maryland. Respondent is now, and has been for more than 6 years last past, engaged in the business of manufacturing, selling, and distributing hosiery in commerce among and between various States of the United States. Respondent causes such hosiery, when sold by him, to be transported from his aforesaid place of business in the State of Maryland to the purchasers thereof at their respective points of location in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said hosiery among and between various States of the United States.

PAR. 2. Respondent is engaged in substantial competition in commerce among and between various States of the United States with other individuals and with firms, partnerships, and corporations selling and distributing hosiery of the same type, kind, and grade as that manufactured and sold by respondent and of various other types, kinds, and grades. Among such competitors in said commerce are many who do not represent, brand, label, advertise, or describe their hosiery falsely or deceptively and who do not represent that their hosiery contains more silk than is in fact present in such hosiery.

PAR. 3. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of his hosiery, the respondent has caused such hosiery to be sold and distributed in commerce among and between various States of the United States bearing certain brands, labels and stamps purporting to relate to and be descriptive of the silk content of the said hosiery.

Findings

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Respondent caused to be stamped on one type of hose which he sold and distributed as aforesaid the following statement and representation:

PURE THREAD SILK
Reinforced
With Art Silk
Made in U. S. A.

and on another type of hose the following:

PURE THREAD SILK
Reinforced
With Fine Rayon
Made in U. S. A.

Respondent caused to be placed on both of the above types of hose a label which read on one side:

Manufactured by
Shalwin Hosiery Mills

and on the other side:

Shalwin New Style
Split Foot Silk Hose
are made of the
finest materials
and will give the wearer
complete satisfaction

In truth and in fact, the top, heel, toe, and sole of such hosiery was made of cotton. The body of said hose designated by the term "Pure Thread Silk" is in fact part rayon and part silk, in the percentage of rayon—87 percent, and silk—13 percent. In truth and in fact, the percentage of silk contained in the whole sock is only 3 percent of the hose by weight.

Respondent caused to be stamped on another type of hose which he sold and distributed as aforesaid the following statement and representation:

Rayon
reinforcing
TWO THREADS PURE SILK

The words "Two Threads Pure Silk" are stamped in large, conspicuous type on said hose while the word "Rayon" is in small and less conspicuous type. In truth and in fact, the top, heel, toe, and sole of said hosiery are made of cotton. The body of said hosiery, stamped with the words "Rayon reinforcing Two Threads Pure Silk," contains approximately 60 percent rayon and 40 percent silk.

By means of such stamps, brands, and labels disseminated as aforesaid, respondent has represented, directly and by implication,

to members of the purchasing public situated in various States of the United States that such hosiery contains silk, the product of the cocoon of the silkworm, as the principal or major constituent therein, and contains silk, the product of the cocoon of the silkworm, in a proportion or quantity larger than the proportion or quantity of rayon present in such hosiery.

PAR. 4. In truth and in fact, said hosiery branded, stamped, labeled, and represented as aforesaid has the appearance and feel of silk but is composed largely of rayon and cotton. Said hosiery is not composed of nor does it contain silk, the product of the cocoon of the silkworm, as the principal or major constituent of said hosiery. The proportion or quantity of rayon is larger than the proportion or quantity of silk present in such hosiery. Such silk as is or may be present in the first type of hose described above is less than 5 percent of the hose by weight, to wit, 3 percent of the hose by weight.

PAR. 5. Through the use of the aforesaid labels, brands, and stamps in the sale and distribution of said hosiery in commerce among and between various States of the United States, respondent has thereby placed, and is continuing to place, in the hands of dealers a means or instrumentality of deception and fraud whereby such dealers are enabled, aided, and assisted in misleading and deceiving members of the purchasing public as to the contents of said hosiery and the quality, value, grade, and substance thereof.

PAR. 6. In the course and conduct of his business as aforesaid respondent has caused to be stamped on a substantial number of said hose the words "50c per pair," which serves as a representation by the respondent that 50 cents per pair is the customary and ordinary retail value of said hose. In truth and in fact, such purported retail value is fictitious and is much higher than the price at which such hose is customarily and ordinarily offered for sale and sold at retail.

PAR. 7. The use by respondent of the foregoing false and misleading statements and representations disseminated as aforesaid has had, and now has, the capacity and tendency to, and does, mislead and deceive members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that such false and misleading statements and representations are true and that said hosiery contains silk, the product of the cocoon of the silkworm, in a larger proportion than is in fact present in such hosiery, and that such hosiery is composed of or contains silk in a quantity or proportion larger than the proportion of rayon contained in said hosiery, and causes members of the purchasing public to purchase substantial quantities of said hosiery because of said erroneous and mistaken belief. As a result, trade has been diverted

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unfairly to the respondent from his competitors in said commerce who truthfully advertise and represent their respective hosiery and the materials contained in such hosiery. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the 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, the answer of respondent, testimony, and other evidence taken before Miles J. Furnas and W. W. Sheppard, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint, respondent having waived filing of brief and not having requested oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Charles W. Cromer, individually and trading and doing business as Shalwin Hosiery Mills, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of hosiery in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner whatsoever that the hosiery manufactured or sold by him contains "silk" or "pure thread silk," the product of the cocoon of the silkworm, in greater quantity, percentage, or degree than is actually the case.

2. Advertising, offering for sale, or selling, hosiery composed in whole or in part of rayon without clearly disclosing the fact that such hosiery is composed of rayon, and when such hosiery is 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, provided that if any particular fiber in said hosiery is not present

in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

3. Using the words "silk" or "pure thread silk," or words of similar import and meaning, to describe, designate, or refer to hosiery which is not composed wholly of silk, the product of the cocoon of the silkworm, provided that in the case of hosiery composed in part of silk and in part of materials other than silk, such words may be used as descriptive of the silk content if there are used in immediate connection and conjunction with the word "silk," in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent, and provided that if any particular fiber in said hosiery is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

4. Using the term "pure thread silk reinforced with rayon" to describe, designate, or refer to any hosiery other than that in which the chief constituent is pure thread silk, the product of the cocoon of the silkworm, combined solely with rayon as a reinforcing substance.

5. Marking, stamping, or affixing to such hosiery, or the containers thereof, or otherwise representing as the customary or regular retail prices therefor, prices which are in fact fictitious and greatly in excess of the prices at which said hosiery is regularly and customarily offered for sale and sold at retail.

This order shall not be construed as permitting the use of the unqualified word "silk" to designate, describe, or refer to weighted silk.

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

IN THE MATTER OF
EDWARD HARRIS AND DOROTHY HARRIS, TRADING AS
ACE BUSINESS BUILDERS

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

Docket 3171. Complaint. July 12, 1937—Decision, Feb. 27, 1939

Where two individuals engaged in selling their so-called business stimulator or sales-promotion plan or trade-promotion cards which were so designed and arranged that use thereof constituted a lottery or gift enterprise when used by retail merchant in promoting and increasing sales of his merchandise to consuming public, and which consisted of cards arranged for punching out \$5 or \$10 in trade, as case might be, and had concealed within their so-called "Treasure Chest," for disclosure, when card, as suggested, had been punched out through merchandise sales made to customer to which given, legends entitling chance holder to amounts in trade ranging from 20 cents to \$5 for the \$5 cards, and from 40 cents to \$10 for the \$10 cards—

Sold to retail dealer customers such cards, together with variety of display posters and advertising matter for such customers in use and distribution of said cards, and punch for canceling numbers arranged on border to indicate amount of sale, and with suggestion for use thereof by their said retail customer merchants who distributed said cards to their customers and prospective customers and honored awards as shown thereon, and thereby knowingly supplied to and placed in the hands of others means of operating lotteries, games of chance, or gift enterprises, contrary to public policy, and in competition with many who are opposed to use or sale of trade-promotion cards or systems which involve lotteries, games of chance, or gift enterprises and refrain from sale thereof;

With effect of inducing many of the consuming public to deal with or purchase merchandise from retail merchants using cards sold by them in preference to purchasing from merchants using sales-booster plans or schemes or devices of competitors which have connected with them no element of lot or chance, and with result, by reason of such fact, that many of such merchants, who cannot use more than one type of sales-promotion or price-concession card or coupon at same time, were induced to purchase cards sold by them in preference to devices or plans of competitors, and trade was thus diverted to them from their competitors, and with result that sales of competing plans or promotion schemes or premium cards or coupons of competitors were injuriously affected; to the prejudice and injury of the public and competitors, and to the restraint and detriment of freedom of fair and legitimate competition:

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. William C. Reeves*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel*, for the Commission