

IN THE MATTER OF
ARONSON-CAPLIN COMPANY, INC.

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

Docket 3649. Complaint, Nov. 9, 1938—Decision, Apr. 3, 1939

Where a corporation engaged in manufacture, sale, and distribution of women's lingerie, including slips and nightgowns, to retailers in various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such products and garments made of silk, rayon, and other fabrics, and including many who do not in any manner misrepresent the nature, character or quality of their merchandise or materials of which made, and do not make any other false statements in connection with sale and distribution thereof—

Represented, through use of such terms as "satin," "taffeta," and "pure dye," and such phrases as, "Taffeta De Luxe 100 percent pure dye, finest tested acetate yarns," on statements purportedly describing material of which its said merchandise was made in catalogs or price lists distributed among prospective purchasers, and on labels attached to articles in question, that said merchandise was made of silk, product of cocoon of silkworm;

Notwithstanding fact said products were not made of silk as aforesaid, as long associated in mind of purchasing public with said terms, which, by substantial part of purchasing public and retailers, were understood and believed to be used only to describe merchandise made of silk, and word "acetate," used either separately or in conjunction with words "satin," "taffeta," or "pure dye," and other words and phrases of similar import or meaning, not sufficiently well known and understood by purchasing public to indicate to or inform them that merchandise thus described was made in whole or in part of material other than silk, and of rayon, was, on contrary, in and as incorporated in such designations, understood by substantial portion of such public to describe silken fabrics and merchandise or products of silk, long held in great public esteem and confidence for their preeminent qualities and preferred by substantial number of members of such public in purchase of lingerie, including slips and nightgowns;

With result of placing, through such labeling on its said articles, distributed as aforesaid, in hands of retailers instrumentality which might be used by them to divert trade unfairly from its competitors who truthfully mark and brand their merchandise, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations and advertisements were true, and that its said products were made of silk, product of cocoon of silkworm, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of its said goods, and of thereby diverting unfairly trade to it from its competitors in commerce who truthfully advertise, brand and mark their products; 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.

Mr. James L. Fort for the Commission.

Mr. Milton N. Mound, 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 Aronson-Caplin Co., 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, Aronson-Caplin Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and having its office and principal place of business at 148 Madison Avenue in the city of New York, State of New York and its factory in the city of Easton, State of Pennsylvania.

PAR. 2. The respondent is now and has been for more than three years last past engaged in the business of manufacturing, selling, and distributing women's lingerie including slips and nightgowns. Respondent sells said merchandise to retail dealers situated in various States of the United States and in the District of Columbia, and causes said merchandise, when sold by it, to be transported from its said factory in the State of Pennsylvania to the purchasers thereof at their respective points of location in various States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in commerce in said merchandise among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations and with partnerships, firms and individuals engaged in the business of selling and distributing women's lingerie, including slips and nightgowns, made of silk, rayon, and other fabrics. Among such competitors in said commerce are many who do not in any manner misrepresent the nature, character, or quality of their merchandise or of the materials of which such merchandise is made and who do not make any other false statements in connection with the sale and distribution of their merchandise.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said merchandise, respondent has caused false advertisements containing statements and repre-

sentations purporting to be descriptive of the material of which such merchandise is made to be inserted in catalogs or price lists distributed among prospective purchasers of said merchandise situated in various States of the United States and the District of Columbia, and has caused false statements and representations purporting to be descriptive of the material of which such merchandise is made to be placed on labels attached to said articles of merchandise. Among and typical of the statements and representations used and disseminated as aforesaid are the following:

Made of Satin La Rue.

Made of New Satin La Rue 100% Pure Dye.

Seamprufe made of Taffeta De Luxe 100% pure dye, finest tested acetate yarns.

Crepe La Rue.

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 respondent's merchandise and of the material of which such merchandise is made, respondent has represented directly and by implication that such merchandise is made of silk, the product of the cocoon of the silkworm. Silk fiber has been woven for many years into a variety of fabrics which are designated or referred to as "satin," "crepe," "taffeta," or "pure dye." Such terms have been for many years, and are now, associated in the mind of the purchasing public with the product of the cocoon of the silkworm commonly known to retail dealers and the purchasing public as "silk." It is the understanding and belief of a substantial portion of the purchasing public and retail dealers that such terms are used only to describe merchandise made of silk. The word "acetate," when used either separately or in combination or in conjunction with the words "crepe," "satin," "taffeta," or "pure dye" and with other words and phrases of similar import or meaning, is not sufficiently well known and understood by the purchasing public to indicate to or inform them that the merchandise so described, designated or referred to is made in whole or in part of a material other than silk, to wit: rayon; but, on the contrary, such designations are understood by a substantial portion of the purchasing public to describe silken fabrics and merchandise made of silk.

PAR. 6. The aforesaid statements and representations, used and disseminated by the respondent in the manner above described, are misleading and untrue and constitute false advertisements. In truth and in fact, the said merchandise of the respondent is made in whole or in part of rayon.

PAR. 7. The word "silk" for many years last past has had, and now has, in the minds of the purchasing public and retail dealers, a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products have had for many years, and now have, great public esteem and confidence for their preeminent qualities. A substantial number of the members of the purchasing public have had, and now have, a preference in purchasing lingerie, including slips and nightgowns, for lingerie made of silk, the product of the cocoon of the silkworm.

PAR. 8. The dissemination by the respondent of the aforesaid false statements and representations by placing such statements and representations on labels on the said articles of merchandise which the respondent distributes to retail dealers, places in the hands of such retail dealers an instrumentality which may be used by such retail dealers to divert trade unfairly from the competitors of respondent in said commerce who truthfully mark or brand their merchandise.

PAR. 9. The use by the respondent of the foregoing false and misleading statements, representations and advertisements, disseminated, as aforesaid, with respect to said merchandise, 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, representations and advertisements are true, and that respondent's said 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 respondent's said merchandise. As a result, trade has been diverted unfairly to respondent from its competitors in said commerce who truthfully advertise, brand, and mark their merchandise. In consequence thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 9, 1938 issued, and on November 10, 1938 served, its complaint in this proceeding upon the

respondent, Aronson-Caplin Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent filed its answer admitting all the material allegations of fact set forth in said complaint, except respondent denied that it misrepresented the fiber content of "Crepe La Rue" as set forth in the complaint, and alleged in its answer that the said "Crepe La Rue" is in fact made of silk. Respondent, in its answer, waived all intervening procedure and further hearing as to the said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and 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. Respondent, Aronson-Caplin Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and has its office and principal place of business at 118 Madison Avenue in the city of New York, State of New York and its factory in the city of Easton, State of Pennsylvania.

PAR. 2. The respondent is now and has been for more than three years last past engaged in the business of manufacturing, selling and distributing women's lingerie including slips and nightgowns. Respondent sells said merchandise to retail dealers situated in various States of the United States and in the District of Columbia, and causes said merchandise, when sold by it, to be transported from its said factory in the State of Pennsylvania and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said merchandise among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations and with partnerships, firms and individuals engaged in the business of selling and distributing women's lingerie, including slips and nightgowns, made of silk, rayon and other fabrics. Among such competitors in said commerce are many who do not in any manner misrepresent the nature, character, or quality of their merchandise or of the materials of which such merchandise is made, and who do not make

any other false statements in connection with the sale and distribution of their merchandise.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said merchandise, respondent has caused false advertisements containing statements and representations purporting to be descriptive of the material of which such merchandise is made to be inserted in catalogs or price lists distributed among prospective purchasers of said merchandise situated in various States of the United States and in the District of Columbia, and has caused false statements and representations purporting to be descriptive of the material of which such merchandise is made to be placed on labels attached to said articles of merchandise. Among and typical of the statements and representations used and disseminated as aforesaid are the following:

Made of Satin La Rue.

Made of New Satin La Rue 100% Pure Dye.

Seamprufe made of Taffeta De Luxe 100% pure dye, finest tested acetate yarns.

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 respondent's merchandise and of the material of which such merchandise is made, respondent has represented, directly and by implication, that such merchandise is made of silk, the product of the cocoon of the silkworm. Silk fiber has been woven for many years into a variety of fabrics which are designated or referred to as "satin," "taffeta," or "pure dye." Such terms have been for many years and are now associated in the mind of the purchasing public with the product of the cocoon of the silkworm, commonly known to retail dealers and the purchasing public as "silk." It is the understanding and belief of a substantial portion of the purchasing public and retail dealers that such terms are used only to describe merchandise made of silk. The word "acetate," when used either separately or in conjunction with the words "satin," "taffeta," or "pure dye" and with other words and phrases of similar import or meaning, is not sufficiently well known and understood by the purchasing public to indicate to or inform them that the merchandise so described, designated or referred to is made in whole or in part of a material other than silk, to wit: rayon; but on the contrary, such designations are understood by a substantial portion of the purchasing public to describe silken fabrics and merchandise made of silk.

PAR. 6. The aforesaid statements and representations used and disseminated by the respondent in the manner above described, are

misleading and untrue and constitute false advertisements. In truth and in fact, the said merchandise of the respondent is made in whole or in part of rayon.

PAR. 7. The word "silk," for many years last past, has had, and now has, in the mind of the purchasing public and retail dealers, a definite and specific meaning, to wit: the product of the cocoon of the silk worm. Silk products have had for many years, and now have, great public esteem and confidence for their preeminent qualities, and a substantial number of the members of the purchasing public have had and now have a preference in purchasing lingerie, including slips and nightgowns, for lingerie made of silk, the product of the cocoon of the silk worm.

PAR. 8. The dissemination by the respondent of the aforesaid false statements and representations by placing such statements and representations on labels on the said articles of merchandise which the respondent distributes to retail dealers, places in the hands of such retail dealers an instrumentality which may be used by such retail dealers to divert trade unfairly from the competitors of respondent in said commerce who truthfully mark or brand their merchandise.

PAR. 9. The use by the respondent of the foregoing false and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said merchandise, has had and now has a 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, representations and advertisements are true and that respondent's said 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 respondent's said merchandise. As a result, trade has been diverted unfairly to respondent from its competitors in said commerce who truthfully advertise, brand and mark their merchandise. In consequence thereof injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of 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.

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Order

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint except that it denies that its fabric "Crepe La Rue" is made of any product other than silk, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Aronson-Caplin Co., Inc., and 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 lingerie, including slips and night-gowns, 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 or fabrics or other products which are not composed wholly of unweighted silk, the product of the cocoon of the silkworm.

2. Using the words "satin" or "taffeta" 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 truthfully to designate the type of weave, construction, or finish, 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 and accurately naming or describing the fibers or materials from which said fabric or product is made.

3. Using the word "acetate" or any other name as indicative of any process of manufacturing rayon, to describe or designate any fabrics, garments, or other products made from rayon unless the word rayon is used in immediate conjunction with such word or name in type of equal size and conspicuousness.

This order shall not be construed as permitting the advertising or offering for sale of fabrics, garments, or other products composed in whole or in part of rayon without disclosing the rayon content of such products.

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

IN THE MATTER OF
**MUELLER COMPANY, A. Y. McDONALD MANUFACTURING
COMPANY, HAYS MANUFACTURING COMPANY, FAR-
NAN BRASS WORKS COMPANY, AND KITSON COMPANY**

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

Docket 3690. Complaint, Jan. 24, 1939—Decision, Apr. 5, 1939

Where five corporations engaged in manufacture and sale of corporation stops and curb stops, principal purchasers of which fittings for water works and gas systems were municipalities and owners of public utilities, who, because of substantial quantity used, bought said products through invitation for bids, for selection therefrom of member of industry for particular purchase, and constituting substantially all the manufacturers of such products and, prior to adoption of practices below set out, in active and substantial competition with each other and with other members of the industry, and which, but for said practices, would still have been in such active substantial competition; with intent of fixing and maintaining prices, suppressing price competition, restraining interstate trade, and eliminating competition between themselves, and suppressing competition and monopolizing said trade—

Entered into and engaged in, and carried out, a wrongful and unlawful agreement, combination, and conspiracy to maintain prices, suppress price competition, eliminate competition between themselves and restrain interstate trade and drive out competitors and monopolize trade aforesaid; and, in pursuance of said understanding, etc., and to carry out the same—

- (1) Agreed to fix and maintain, and did fix and maintain, prices at which said products were sold, and uniform terms and conditions covering sale thereof;
- (2) Agreed to submit, and did submit, in response to requests for bids, uniform and identical bids on such products; and
- (3) Used coercive measures to compel jobbers to maintain the prices thereon;

With result that the capacity, tendency and effect of such agreement, combination, etc., and their said acts and practices done thereunder and pursuant thereto, were to monopolize in themselves business of manufacture and sale of such products, and unreasonably to lessen, eliminate and restrain, and hamper and suppress competition in sale thereof in interstate commerce, and deprive purchasing public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said industry, and otherwise to operate as a restraint of trade and detriment to the freedom of fair and legitimate competition in trade in question, and to obstruct natural flow of trade into channels of commerce: