

IN THE MATTER OF
**ABRAHAM TABACHNICK, TRADING AS UNEEDA UNDER-
WEAR COMPANY**

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

Docket 3686. Complaint, Jan. 10, 1939—Decision, May 20, 1939

Where an individual engaged in manufacture, sale, and distribution of ladies' knitted undergarments, to wholesale and retail dealers and other customers in various other States and in the District of Columbia—

- (a) Represented that certain of his said garments were composed of a mixture of silk and wool, through labels, tags, and markers attached thereto which described same, as case might be, as containing "33½% silk and wool" and "15% silk and wool," facts being neither garment thus referred to was composed of silk mixed with wool, but said products were composed, respectively, of 92 percent cotton and 8 percent rayon, and 90 percent cotton and 10 percent rayon, and contained no silk, product of cocoon of silkworm, as long understood by purchasing and consuming public generally from said word, and held in high esteem in products made thereof for their preeminent qualities; and
- (b) Represented certain of said garments as "30% wool and rayon," through use of statements in which word "wool" was accentuated by use of large type and word "rayon" was printed in much smaller type, on labels, tags, and markers, notwithstanding fact that they were not composed of admixture of wool and rayon in proportion represented, but were composed of 78 percent cotton, 9 percent rayon and 13 percent wool;

With capacity and tendency to mislead and deceive trade, including wholesale and retail dealers and substantial portion of purchasing public, into erroneous belief that such representations were true, and that said garments were composed of silk and wool, products of which have established reputation as possessing superior cold resistant qualities over those made from cotton or other material, and for which there is decided preference on part of purchasers and prospective purchasers of undergarments over other, and of causing such trade and public to purchase said products as result of such erroneous belief thus engendered:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. James L. Fort for the Commission.

Mr. Bernard Austin, 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 Abraham Tabach-

1646

Complaint

nick, an individual trading as Uneeda Underwear Co., 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 Abraham Tabachnick is an individual trading as Uneeda Underwear Co., with his office and principal place of business located at 335 Van Siclen Avenue, Brooklyn, N. Y. This respondent is now and for more than two years last past has been engaged in the manufacture, sale and distribution of ladies' knitted undergarments. He sells and has sold and distributed such undergarments to wholesale and retail dealers and other customers located in various States of the United States and causes said products, when sold by him to be transported from his place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, and in soliciting the sale of and selling his said products, the respondent has represented and is now representing that certain ladies' knitted undergarments manufactured, sold and distributed by him are composed of a mixture of silk and wool, by means of labels, tags, and markers attached to said garments which designate and describe said products as follows:

This garment contains 33 $\frac{1}{3}$ % silk and wool.
15% silk and wool.

In truth and in fact, the knitted undergarments designated as containing 33 $\frac{1}{3}$ percent and wool are not, in fact, composed of silk, the product of the cocoon of the silkworm, admixed with wool, but instead, the said undergarments so designated are, in fact, composed of 92 percent cotton and 8 percent rayon. The undergarments designated as being composed of 15 percent silk and wool are not, in fact, composed of silk, the product of the cocoon of the silkworm, admixed with wool, but instead, contain 90 percent cotton and 10 percent rayon.

PAR. 3. In addition to the above described undergarments, the respondent also manufactures, sells, and distributes certain ladies' knitted undergarments which are designated by means of labels, tags, and markers as being composed of "30% wool and rayon." On these labels, tags, and markers the respondent accentuates the term "wool"

by use of large type while the term "rayon" is printed in much smaller type. In truth and in fact, said garments are not composed of an admixture of wool and rayon in the proportion represented by the respondent, but instead, said garments are composed of 78 percent cotton, 9 percent rayon, and 13 percent wool.

PAR. 4. The word "silk" has had for many years last past 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. Fabrics made of all wool or wool and silk have established a reputation as possessing superior cold resistance qualities over fabrics made from cotton or other materials. Purchasers and prospective purchasers of undergarments on account of such reputation have a decided preference for all wool or silk and wool fabrics over fabrics composed in part of cotton.

PAR. 5. The use by the respondent of the representations set forth herein has had and now has the capacity and tendency to mislead and deceive the trade, including wholesale and retail dealers, and a substantial portion of the purchasing public into the erroneous belief that such representations are and were true, and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute 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 10th day of January 1939, issued its complaint in this proceeding and caused the complaint to be served upon the respondent, Abraham Tabachnick, an individual trading as Uneeda Underwear Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act.

After the issuance of the complaint, respondent filed his answer, admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the facts. The answer was duly filed in the office of the Commission on the 2d day of April 1939.

Thereafter this proceeding regularly came on for final hearing before the Commission on the complaint and answer, and the Com-

1646

Findings

mission 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 Abraham Tabachnick, is an individual trading as Uneeda Underwear Co., with his office and principal place of business located at 335 Van Siclen Avenue, Brooklyn, N. Y. This respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of ladies' knitted undergarments. He sells, and has sold and distributed, such undergarments to wholesale and retail dealers and other customers located in various States of the United States, and causes said products, when sold by him, to be transported from his place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, and in soliciting the sale of and selling his said products, the respondent has represented, and is now representing, that certain ladies' knitted undergarments manufactured, sold, and distributed by him are composed of a mixture of silk and wool, by means of labels, tags, and markers attached to said garments, which designate and describe said products as follows:

This garment contains 33 $\frac{1}{3}$ % silk and wool.
15% silk and wool.

In truth and in fact, the knitted undergarments designated as containing 33 $\frac{1}{3}$ percent silk and wool are not, in fact, composed of silk, the product of the cocoon of the silkworm, admixed with wool, but instead, the said undergarments so designated are, in fact, composed of 92 percent cotton and 8 percent rayon. The undergarments designated as being composed of 15 percent silk and wool are not, in fact, composed of silk, the product of the cocoon of the silkworm, admixed with wool, but instead, contained 90 percent cotton and 10 percent rayon.

PAR. 3. In addition to the above-described undergarments, the respondent also manufactures, sells, and distributes certain ladies' knitted undergarments which are designated by means of labels, tags,

Order

28 F. T. C.

and markers, as being composed of "30 percent wool and rayon." On these labels, tags, and markers the respondent accentuates the term "wool" by use of large type while the term "rayon" is printed in much smaller type. In truth and in fact, said garments are not composed of an admixture of wool and rayon in the proportion represented by the respondent, but instead, said garments are composed of 78 percent cotton, 9 percent rayon and 13 percent wool.

PAR. 4. The word "silk" has had for many years last past, 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. Fabrics made of all wool or wool and silk have established a reputation as possessing superior cold resistance qualities over fabrics made from cotton or other material. Purchasers and prospective purchasers of undergarments, on account of such reputation, have a decided preference for all wool or silk and wool fabrics over fabrics composed in part of cotton.

PAR. 5. The use by the respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive the trade, including wholesale and retail dealers, and a substantial portion of the purchasing public into the erroneous belief that such representations are, and were, true, and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice of the public and constitute 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 respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives 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 respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Abraham Tabachnick, individually and trading as Uneeda Underwear Co., or under any other name

1646

Order

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 ladies' knitted undergarments and other similar apparel in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "silk" or any other word or words of similar import or meaning to designate or describe any fabric or other product which is not composed wholly of silk, the product of the cocoon of the silkworm; or from using the word "wool" or any other word or words of similar import or meaning to designate or describe any fabric or other product which is not composed wholly of wool; or from using the words "silk and wool" or any other words of similar import or meaning to designate or describe any fabric or other product which is not composed wholly of silk, the product of the cocoon of the silkworm, combined solely with wool; except that in the case of a fabric or product composed in part of silk or in part of wool, or in part of silk and in part of wool, and in part of a material or materials other than silk and wool, such words may be used as descriptive of the respective silk and wool content if there is used in immediate connection therewith in letters of equal size and conspicuousness a word or words accurately describing and designating each constituent fiber or material thereof in the order of its predominance by weight beginning with the largest single constituent.

2. Representing that any fabric or other product has a stated percentage of silk and wool or silk or wool unless in fact such fabric or product does contain silk and wool or silk or wool in the proportions stated.

3. Advertising, offering for sale, or selling, fabrics or any other products composed in whole or in part of rayon, without clearly disclosing the fact that such fabrics or products are composed of rayon and when such fabrics or products are composed in part of rayon and in part of other fibers and 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.

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

This order shall not be construed as permitting the use of the unqualified word "wool" to designate, describe or refer to any wool which is not virgin or unused wool.

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

RICHARD ROSEBURY ORGANIZATION, INC., AND
RICHARD W. ROSEBURYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3710. Complaint, Feb. 14, 1939—Decision, May 20, 1939*

Where a corporation engaged in soliciting orders for, and in selling, various magazines through solicitors who called upon purchasing public—

- (a) Represented, as aforesaid, to prospective subscribers, that they would receive two or more designated magazines at the price and for the period stated by the solicitor, and exhibited to prospective subscriber, and delivered to him if he subscribed, printed receipt form furnished by said corporation, which acknowledged receipt of amount paid and which, and, while ostensibly naming two or more magazines which subscriber was to receive, through arrangement and prominence given to certain words, and thus appearing to corroborate solicitor's representation, as matter of fact named but one;
- (b) Told subscribers receiving such receipts for "Current Events," and upon which were also displayed, as above indicated, words "International News" and "Good Stories" and statement "Good Stories feature of Current Events and International News adds to its educational value," that such subscribers would receive "Good Stories," "Current Events," and "International News," and thus, or otherwise, led them to believe they would receive such three magazines, facts being magazine "Good Stories" only was ordered from publisher by said corporation and received by subscriber; and
- (c) Failed to forward, in some instances, to publisher of any magazines, subscriptions secured by its representatives from subscribers, who received no periodical whatsoever;

With effect of causing purchasers to buy magazine subscriptions from it and its representatives in erroneous and mistaken belief that in so purchasing they would receive subscriptions to a greater number of magazines than was the case, and of thereby diverting unfairly trade to it from those of its competitors who, in soliciting subscriptions to magazines, truthfully represent identity and number to be received by the subscribers thereto; 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. B. G. Wilson for the Commission.

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 Richard Rosebury Organization, Inc., and Richard W. Rosebury, an individual, herein-