

IN THE MATTER OF
ADOLPH FRIEDMAN, TRADING AS SUPERYARN
COMPANY

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

Docket 3753. Complaint, Apr. 1, 1939—Decision, May 20, 1939

Where an individual engaged in sale and distribution of various grades and types of textile fabrics and knitting yarn; in describing his products in catalogs, price lists, and in advertisements in periodicals, newspapers, and other publications distributed among prospective purchasers of said products in various States and in the District of Columbia—

- (a) Represented that certain product was composed entirely of unweighted silk, through use of words "Silk Boucle" in descriptive matter referring thereto, and other similar statements in various advertising material, price lists, catalogs, and on labels, notwithstanding fact product thus referred to was composed entirely of rayon and was not composed entirely of unweighted silk, product of cocoon of silkworm, as long definitely and specifically understood by purchasing and consuming public generally from said word, and as meaning unweighted product not subjected to process of metallic bath, and products of which have been long held in great public esteem and confidence for their preeminent qualities;
- (b) Made use of such nondisclosing designations as "Special Boucle" on labels and in catalogs, to designate or describe rayon products and yarn which had appearance and feel of silk and were, by purchasing and consuming public, indistinguishable therefrom;
- (c) Represented that certain of his products were of a finer grade and higher quality, or of a different fiber, than was actually the fact, through use of words or phrases indicative to purchasing public of certain fiber, grade, or quality, such as "Cashmere," on labels and in advertising and catalogs, to designate and describe products which did not contain hair of cashmere goat, as long understood from word as applied to such products made therefrom, and well and favorably known to purchasing public and associated by members thereof with word, as thus applied, but were composed of other wool and not hair aforesaid;
- (d) Made use of words, associated in mind of purchasing and consuming public as descriptive of wool exclusively, to designate and describe certain yarn products composed in part thereof only, and in part of other material, through use of such terms as "Zephyr Tweed" and "Tweed Velnette" on labels, advertising material, and in catalogs, to designate yarn product composed in part of wool and in part of rayon, and described latter as composed of "wool mixture and silk nub," notwithstanding fact composition thereof was of wool and rayon entirely, as aforesaid, and said products were not that certain kind of fabric made entirely of wool, as long well and favorably known to substantial portion of purchasing and consuming public from word "tweed"; and

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- (e) Represented, through use of words "Manufacturer of Superyarn" and "Importer" on his billheads, business cards and advertising material, that he was manufacturer and importer of yarn or yarn fiber and material, notwithstanding fact he was not such manufacturer or importer, for dealing directly with which there has long been preference on part of substantial portion of purchasing and consuming public as affording, in its belief, lower prices, superior products and other advantages;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true, and that said individual had truthfully represented constituent fiber or material of his various products, and that they were actually made or imported by him, and with result, as consequence of such belief, that number of consuming public purchased substantial volume of his said products and trade was diverted unfairly to him from competitors likewise engaged in sale and distribution in commerce and in District of Columbia of various grades and types of knitting yarn:

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.

Woods & Wertlieb, 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 Adolph Friedman, an individual, trading as Superyarn Co., has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Adolph Friedman, is an individual trading as Superyarn Co., with his principal place of business located at 353 Grand Street, in the city of New York, State of New York.

PAR. 2. Respondent is now and for a year or more last past has been engaged in the business of selling and distributing various grades and types of textile fabrics and knitting yarn. Respondent sells his products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, 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 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. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce among

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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 individuals and with corporations, firms and partnerships engaged in the business of selling and distributing various grades and types of knitting yarn in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his said business the respondent has engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by him are made, by means of false representations on labels attached to his products and in various advertising matter and by a failure to disclose the rayon content of certain of his products. In furtherance of this practice and for the purpose of inducing the purchase of his said products, respondent has caused false statements and representations purporting to be descriptive of such products and their respective constituent fiber or material to be inserted in catalogs, price lists, and in advertisements appearing in magazines, newspapers and in other publications distributed among prospective purchasers of said products situated in various States of the United States and in the District of Columbia.

PAR. 5. Among and typical of the acts and practices above described, the respondent represents certain of his products as being composed entirely of silk, the product of the cocoon of the silkworm, when in fact said products are composed entirely of rayon. As an example of this practice the respondent causes certain advertisements to be inserted in various publications, of which the following is an example:

Silk Boucle 88¢

SUPERYARNS

Lowest prices. New textures and shadings. 1001 rich, bright, lasting colors. Satisfaction guaranteed. SUPERYARN CO., DEPT. D 353 Grand Street, New York, New York. Free Samples.

By means of the above statement, together with other and similar statements appearing in various advertising material, price lists, catalogs, and on labels, distributed as aforesaid, the respondent represents that said product is composed entirely of unweighted silk, the product of the cocoon of the silkworm, when in truth and in fact said product is composed entirely of rayon.

PAR. 6. Another and typical act and practice engaged in by the respondent in falsely representing his products, is the use on labels and in catalogs, distributed as aforesaid, of designations or descrip-

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tions applied to rayon products which have the appearance and feel of silk, and are by the purchasing and consuming public indistinguishable from silk, and which designations do not disclose that said products are composed of rayon. As a typical example of this practice the respondent uses the term "Special Boucle" in the manner and form above described to designate and describe a product composed entirely of rayon, and fails to disclose the fact that said yarn is composed of rayon.

PAR. 7. Typical also of said acts and practices, the respondent represents certain of his products as being of a finer grade, higher quality or of a different fiber than is actually the fact by the use of words or phrases indicative to the purchasing public of a certain fiber, grade or quality. An example of this practice is the respondent's use of the word "cashmere" on labels, in advertising material, and in catalogs distributed as aforesaid, to designate and describe products which do not contain the hair of the cashmere goat but instead are composed of other wool.

PAR. 8. A further typical act and practice on the part of the respondent is the use of words which are associated in the minds of the purchasing and consuming public as being descriptive of wool exclusively, to designate and describe certain yarn products, as aforesaid, which are composed in part of wool and in part of other materials. As an example of this practice the respondent uses the terms "Zephyr Tweed" and "Tweed Vелnette" on labels, in advertising material, and in catalogs, distributed as aforesaid, to designate a yarn product composed in part of wool and in part of rayon. In connection with the use of "Tweed Vелnette," respondent describes said product as being composed of a "wool mixture and silk nub" when in fact said product is composed entirely of wool and rayon.

PAR. 9. 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 preëminent qualities. The unqualified word "silk" has, in the minds of the purchasing and consuming public, the definite and specific meaning of unweighted silk or silk which has not been subjected to the process of a metallic bath.

The word "cashmere" has long been applied to a particular type of wool fiber that is made from the hair of the cashmere goat, and which product has for a long time been known well and favorably to the purchasing public. The word "cashmere" when used in connection with the designation and description of yarns or other products hav-

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ing the general appearance of wool fibers, is considered by members of the purchasing public as being a descriptive designation of a cashmere wool product composed entirely of the hair of the cashmere goat.

The word "tweed" is a word long and favorably known to a substantial portion of the purchasing and consuming public as a certain kind of fabric composed entirely of wool.

The word "rayon" is the name of a chemical fiber or fabric which simulates silk in that it has the appearance and feel of silk and is by the purchasing public practically indistinguishable from silk.

PAR. 10. In addition to the acts and practices above described, the respondent by use of the words "Manufacturer of Superyarn" and "Importer" on billheads, business cards, and advertising material, represents that he is a manufacturer and importer of yarns or yarn fiber and material. In truth and in fact respondent is not a manufacturer of yarn and is not an importer of yarns or yarn fiber or material.

There has long been a preference on the part of a substantial portion of the purchasing and consuming public for dealing directly with the manufacturer or importer in the belief that lower prices, superior products and other advantages can thereby be obtained, and the claims of respondent that he is a manufacturer and importer would have a tendency to cause such persons to purchase respondents' products.

PAR. 11. The use by the respondent of the aforesaid acts and practices has had and now has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that the respondent has truthfully represented the constituent fiber or material of his various products and that said products are manufactured or imported by the respondent. On account of this erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to the respondent from his competitors who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of various grades and types of knitting yarn. As a consequence thereof injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 12. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of re-

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spondent's 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 1, 1939, issued, and on April 3, 1939 served, its complaint in this proceeding upon respondent, Adolph Friedman, trading as Superyarn Co., charging him with unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 27, 1939, respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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, Adolph Friedman, is an individual trading as Superyarn Co., with his principal place of business located at 353 Grand Street in the city of New York, State of New York.

PAR. 2. Respondent is now, and for a year or more last past has been, engaged in the business of selling and distributing various grades and types of textile fabrics and knitting yarn. Respondent sells his products to members of the purchasing public situated in various States of the United States and in the District of Columbia, 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 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. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in 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 individuals and with corpora-

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tions, firms, and partnerships engaged in the business of selling and distributing various grades and types of knitting yarn in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his said business, the respondent has engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by him are made, by means of false representations on labels attached to his products and in various advertising matter, and by failure to disclose the rayon content of certain of his products. In furtherance of this practice and for the purpose of inducing the purchase of his said products, respondent has caused false statements and representations purporting to be descriptive of such products and their respective constituent fiber or material to be inserted in catalogs, price lists, and in advertisements appearing in magazines, newspapers and in other publications distributed among prospective purchasers of said products situated in various States of the United States and in the District of Columbia.

PAR. 5. Among and typical of the acts and practices above described, the respondent represents certain of his products as being composed entirely of silk, the product of the cocoon of the silk worm, when, in fact, said products are composed entirely of rayon. As an example of this practice, the respondent causes certain advertisements to be inserted in various publications such as the following:

Silk Boucle 88¢ SUPERYARNS
Lowest prices. New textures and shadings. 1001 rich, bright, lasting
colors. Satisfaction guaranteed.
SUPERYARN CO. DEPT. D.
353 Grand Street, New York, New York. Free Samples.

By means of the above statement, together with other and similar statements appearing in various advertising material, price lists, catalogs, and on labels, distributed as aforesaid, the respondent represents that said product is composed entirely of unweighted silk, the product of the cocoon of the silk worm, when, in truth and in fact, said product is composed entirely of rayon.

PAR. 6. Another and typical act and practice engaged in by the respondent in falsely representing his products is the use on labels and in catalogs, distributed as aforesaid, of designations or descriptions applied to rayon products which have the appearance and feel of silk, and are by the purchasing and consuming public indistinguishable from silk, and which designations did not disclose that said products are composed of rayon. As a typical example of this practice the respondent uses the term "Special Boucle," in the manner

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and form above described, to designate and describe a product composed entirely of rayon, and fails to disclose the fact that said yarn is composed of rayon.

PAR. 7. Typical also of said acts and practices, the respondent represents certain of his products as being of a finer grade and a higher quality or of a different fiber than is actually the fact, by the use of words or phrases indicative to the purchasing public of a certain fiber, grade or quality. An example of this practice is the respondent's use of the word "cashmere" on labels, in advertising material, and in catalogs, distributed as aforesaid, to designate and describe products which do not contain the hair of the Cashmere goat but instead are composed of other wool.

PAR. 8. A further and typical act and practice on the part of the respondent is the use of words which are associated in the minds of the purchasing and consuming public as being descriptive of wool exclusively, to designate and describe certain yarn products, as aforesaid, which are composed in part of wool and in part of other material. As an example of this practice, the respondent uses the terms "Zephyr Tweed" and "Tweed Velnette" on labels, advertising material, and in catalogs, distributed as aforesaid, to designate a yarn product composed in part of wool and in part of rayon. In connection with the use of "Tweed Velnette," respondent describes said product as being composed of a "wool mixture and silk nub," when in fact said product is composed entirely of wool and rayon.

PAR. 9. 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 silk worm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities. The unqualified word "silk" has, in the minds of the purchasing and consuming public, the definite and specific meaning of unweighted silk or silk which has not been subjected to the process of a metallic bath.

The word "cashmere" has long been applied to a particular type of wool fiber that is made from the hair of the Cashmere goat, and which product has for a long time been known well and favorably to the purchasing public. The word "cashmere," when used in connection with the designation and description of yarns or other products having the general appearance of wool fibers, is considered by members of the purchasing public as being a descriptive designation of a cashmere wool product composed entirely of the hair of the Cashmere goat.

The word "tweed" is a word long and favorably known to a substantial portion of the purchasing and consuming public as a certain kind of fabric composed entirely of wool.

The word "rayon" is the name of a chemical fiber or fabric, which simulates silk in that it has the appearance and feel of silk and is, by the purchasing public, practically indistinguishable from silk.

PAR. 10. In addition to the acts and practices above described, the respondent, by use of the words "Manufacturer of Superyarn" and "Importer", on bill heads, business cards and advertising material, represents that he is a manufacturer and importer of yarn or yarn fiber and material. In truth and in fact, respondent is not a manufacturer of yarn and is not an importer of yarn or yarn fiber or material.

There has long been a preference on the part of a substantial portion of the purchasing and consuming public for dealing directly with a manufacturer or importer in the belief that lower prices, superior products and other advantages can thereby be obtained.

PAR. 11. The use by the respondent of the aforesaid acts and practices has had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that the respondent has truthfully represented the constituent fiber or material of his various products and that said products are actually manufactured or imported by the respondent. On account of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to the respondent from his competitors who are also engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of various grades and types of knitting yarn.

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, 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 the respondent, in which answer respondent admits all the material

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allegations of fact set forth in said complaint and states that he 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, Adolph Friedman, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of various grades and types of textile fabrics and knitting yarn and other like articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's products are composed of fibers or materials other than those of which they are actually composed.

2. Using the words "Tweed" or "Wool" or any other words or terms of similar import and meaning, to describe or designate any fabric or product which is not composed entirely of wool.

3. Representing that the quality, grade or character of respondent's products are superior to or different from their true quality, grade or character.

4. Using the word "Cashmere" 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 the hair of the Cashmere goat.

5. Using the unqualified word "silk" or any other word or words of similar import or meaning, to designate or describe fabrics which are not composed wholly of unweighted silk, the product of the cocoon, of the silkworm, except that in the case of a fabric or product composed in part of unweighted silk and in part of materials other than unweighted silk, such words may be used as descriptive of the silk content if there is used in immediate connection or conjunction 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.

6. 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 or materials, such fibers or materials, including rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

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7. Representing that the respondent is a manufacturer, unless and until he actually owns and operates or directly and absolutely controls a manufacturing plant wherein said products are actually manufactured.

8. Representing that respondent is an importer, unless he directly imports from a foreign country a substantial portion of the products offered for sale and sold by him.

This order shall not be construed as approving the use of the term "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 the 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.

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IN THE MATTER OF
GEORGE HENRY BRINKLER

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

Docket 2639. Complaint, Nov. 21, 1935—Decision, May 23, 1939

Where an individual engaged in sale and distribution of correspondence courses in diet and health, in which diets recommended contained no water, as such, and no table salt, but consisted of fresh red meats, fruit and vegetable juices, and such other foods as said individual deemed suitable to eliminate waste and produce vitality in the student or patient, in view of his condition and surroundings, and to rid him of diseases and to keep him well for the rest of his life, and in advertising his said courses through testimonial letters and circulars sent by mail into the other States, and in periodicals circulating among the several States, and in competition with others engaged in sale of correspondence courses in home study in the field of diet to men and women living in the several States, and in securing their students through national advertising conforming, as a rule, to recognized canons of truth, and also with those engaged in making and selling in commerce medicinal preparations and apparatus used and useful for the treatment of specific diseases or ailments of the body—

- (a) Represented that congestion or waste matter in the blood was the cause of all diseases, and that starvation of the affected part or parts was the only one disease, and that every disease known or yet to be discovered and named was necessarily a result of poor circulation of the blood or starvation of affected tissues; and
- (b) Represented that his courses were competent and adequate treatment for cure and elimination of all diseases of human beings whatsoever, and specifically for named diseases, including appendicitis, heart trouble, asthma, arthritis, and others, and that through following his courses memory and eyesight would be improved, circulation restored to normal, and various other beneficial results accomplished, including increase in income and wealth and promotion of the health and efficiency of one's children, etc.;

Facts being congestion or waste matter in blood is not cause of all diseases, nor is every disease necessarily result of poor circulation of blood or starvation of affected part or parts, and his said courses did not constitute competent or adequate treatment for all diseases, with possible exception of restricted number caused by diet deficiency, many patients receiving only such treatment would, in opinion of outstanding authorities in medical profession, be neglected, substitution of fruit and vegetable juices for water is positively dangerous to patients suffering from some ailments, and method of treatment or diet outlined do not constitute adequate or competent treatment for various diseases specified, and has no therapeutic or medical value, with possible exception aforesaid in so-called deficiency diseases;