

IN THE MATTER OF
HART, SCHAFFNER & MARX, AND WALLACH'S, INC.

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

Docket 3560. Complaint, Aug. 29, 1938. Decision, July 10, 1939

Where a corporation engaged in manufacture, sale and distribution of men's clothing, and subsidiary thereof engaged in sale and distribution of men's clothing and furnishings, and in featuring, in retail trade, products of former, and, as thus engaged, in selling their said products to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of men's wearing apparel made from wool, silk, rayon and other fibers, in commerce among the various States and in said District—

- (a) Attached to garments made by said corporation and sold and distributed by it and by said subsidiary, labels which displayed under name of said manufacturing corporation, designation "Silkool" and legend "Cool, sheer, porous, style retaining. Made of 50% natural silk. 50% man made silk (acetate)"; and
- (b) Made use also of other label bearing word "Silkool" without qualification, and advertised their said products under said name in newspapers and other periodicals of interstate circulation, and supplied to dealers purchasing its products electrotype mats, for newspaper advertisements, featuring said word, together with legend "What's the secret of this unique fabric? A blend of 50% natural silk and 50% man made silk (Acetate)";

Facts being garments thus advertised and offered were not, as thus represented, composed wholly of silk, product of cocoon of silkworm, as long understood by consuming public generally from word "silk," but were composed of wild silk and rayon of about equal parts, and use of word "acetate," not generally understood by substantial portion of purchasing public as identifying product as rayon, did not place purchasers on notice that fabric thus designated was in fact rayon and not silk, products of which have long been held in great public esteem and confidence for their preeminent qualities;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such statements and representations were true, and that garments in question were composed entirely of silk, and to induce purchase of their said products as result of such erroneous and mistaken belief, and to divert unfairly trade to them from competitors who do not misrepresent the goods which they manufacture and offer:

Held, That such acts and practices, as above set out, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

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

Mr. James L. Fort for the Commission.

Mayer, Meyer, Austrian & Platt, of Chicago, Ill., and *Mr. George S. Ward*, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Hart, Schaffner & Marx, a corporation, and Wallach's, Inc., a corporation, hereinafter referred to as respondents, have 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, Hart, Schaffner & Marx, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 36 South Franklin Street, in the city of Chicago, State of Illinois.

Respondent, Wallach's, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Fifth Avenue and Thirty-third Street, in the city of New York, State of New York. Respondent, Wallach's, Inc., is a wholly-owned subsidiary of, and is controlled and directed by, respondent Hart, Schaffner & Marx. Respondent, Wallach's, Inc., is hereinafter referred to on occasion as the respondent subsidiary.

Respondent is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of men's clothing. Respondent subsidiary is now, and for many years last past has been, engaged in the sale and distribution of the respondent's products to the retail trade. Respondent and respondent subsidiary cause, and at all times herein mentioned have caused, respondent's said goods, when sold, to be shipped from their respective places of business in the city of Chicago, State of Illinois, and in the city of New York, State of New York, to the purchasers thereof located in the various States of the United States other than Illinois and New York, and in the District of Columbia. Respondent and respondent subsidiary maintain, and at all times mentioned herein have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

Respondent and respondent subsidiary are now, and have been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale and distribution of men's wearing apparel made from silk, rayon, cotton, and other fibers, in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 2. In the course and conduct of their businesses, as mentioned in paragraph 1 hereof, respondent and respondent subsidiary, in soliciting the sale of and selling certain of respondent's products to their respective customers, attach to certain garments manufactured by respondent and sold and distributed by it and by respondent subsidiary tags reading as follows:

HART, SCHAFFNER & MARX

SILKOOL

Cool, sheer, porous, style retaining Made of 50% natural silk. 50% man made silk (acetate).

Another type of label used by respondent and by respondent subsidiary in the sale and distribution of respondent's products bears the word "SILKOOL" without any qualification. In soliciting the sale of and selling said products, and for the purpose of inducing the purchase thereof, respondent and respondent subsidiary also caused, and now cause, advertising matter to be inserted in newspapers and other periodicals having an interstate circulation wherein such products of respondent were, and are, described and referred to as "SILKOOL." Respondent also supplied to dealers purchasing its product certain electrotpe mats, for use in newspapers, containing advertisements of certain of its suits in which the word "SILKOOL" was in larger type and appeared much more prominently than any other word printed on the mat. Under this name was printed, among other things, the following:

What's the secret of this unique fabric. A blend of 50% natural silk and 50% man made silk (Acetate).

The foregoing statements and representations made by the respondent and respondent subsidiary, as in this paragraph set out, serve as representations to dealers in men's wearing apparel and to the members of the purchasing public that such products, so advertised and offered for sale, were and are products composed wholly of silk. The representations hereinabove set forth were and are false and misleading, in that said products so represented, designated, and referred to, are not, and were not, composed wholly of silk, the product of the cocoon of the silkworm, but are and were composed of wild silk and rayon in about equal parts.

PAR. 3. The word "silk" for many years last past has had, and still has, in the mind of the 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.

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

PAR. 4. There are, among the competitors of respondent and of respondent subsidiary, as described in paragraph 1 hereof, those who do not misrepresent the goods manufactured and offered for sale by them.

The use by respondent and respondent subsidiary of the false, deceptive, and misleading statements and representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and that said garments were composed entirely of silk, and into the purchase of said respondent's products as a result of such erroneous belief. By the statements and representations aforesaid, trade is diverted unfairly to respondent and respondent subsidiary from the competitors referred to in paragraph 4 hereof. As a result thereof, injury is being done, and has been done, by respondent and respondent subsidiary to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent and respondent subsidiary, as herein alleged, are all to the prejudice of the public and of their 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 August 29, 1938, issued, and on August 30, 1938 served its complaint against respondent Hart, Schaffner & Marx and Wallach's, Inc., corporations, charging them with the use of unfair methods of competition in commerce in violation of the provisions of section 5 of said act. The respondents filed their answer on September 19, 1938. Subsequently a stipulation as to the facts was entered into between the attorneys of record and said stipulation was accepted and approved by the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer and the stipulation as to the facts and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this

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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. The respondent, Hart, Schaffner & Marx, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York with its principal place of business located at 36 South Franklin Street, Chicago, Ill. Respondent, Wallach's Inc., is a corporation, organized and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at Fifth Avenue and Thirty-third Street, New York, N. Y. Respondent Wallach's, Inc., is a wholly owned subsidiary of, and is controlled and directed by, respondent Hart, Schaffner & Marx. For convenience, when both respondents are referred to hereinafter they will be referred to as respondents. When respondent, Hart, Schaffner & Marx is referred to, it will be as respondent; when respondent Wallach's, Inc., is referred to, it will be as respondent subsidiary.

Respondent is now, and for many years last past has been, engaged in the manufacture, sale and distribution of men's clothing. Respondent subsidiary is now, and for many years last past has been, engaged in the sale and distribution of men's clothing and furnishings, featuring in retail trade the products of respondent. Respondent and respondent subsidiary cause and at all times herein mentioned have caused, respondent's said merchandise when sold to be transported from their respective places of business in the city of Chicago, State of Illinois, and the city of New York, State of New York, to purchasers thereof located in the various States of the United States other than Illinois and New York, respectively, and in the District of Columbia.

The respondents maintain, and at all times herein mentioned have maintained, a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

Respondents are now and have been in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of men's wearing apparel made from wool, silk, rayon, and other fibers, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their businesses as mentioned in paragraph 1 hereof, and in soliciting the sale of and selling cer-

tain garments to their respective customers, respondents attach to said garments manufactured by respondent and sold and distributed by it and by respondent subsidiary labels reading as follows:

HART, SCHAFFNER & MARX

SILKOOL

Cool, sheer, porous, style retaining. Made of 50% natural silk. 50% man made silk (acetate).

Another type of label used by respondent and respondent subsidiary in conjunction with label just referred to in the sale and distribution of respondent's products bears the word "SILKOOL" without any qualification. In soliciting the sale of, and selling, said products, and for the purpose of inducing the purchase thereof, respondents also caused advertising matter to be inserted in newspapers and other periodicals having an interstate circulation wherein such products of respondent were described and referred to as "SILKOOL." Respondent also supplied to dealers purchasing its product certain electrotype mats, for use in newspapers, containing advertisements of certain of its suits in which the word "SILKOOL" was in larger type and appeared much more prominently than any other word printed on the mat. Under this name as printed, among other things, the following:

What's the secret of this unique fabric? A blend of 50% natural silk and 50% man made silk (Acetate).

The foregoing statements of respondents as in this paragraph set out served as representation to dealers in men's wearing apparel and to the members of the purchasing public that such products so advertised and offered for sale were products composed wholly of silk. In fact the aforesaid products were not composed wholly of silk, the product of the cocoon of the silkworm, but were composed of wild silk and rayon of about equal parts.

PAR. 3. The word "silk" for many years last past has had, and still has, in the minds of the 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.

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

The word "acetate" used by respondents as above set forth, is not generally understood by a substantial portion of the purchasing public to identify a product as rayon, or to place said purchasers on notice that the fabric so designated is in fact rayon and not silk.

PAR. 4. There are among the competitors of respondents, as described in paragraph 1 hereof, those who do not misrepresent the goods manufactured and offered for sale by them.

The use by respondents of the methods hereinabove described had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statements and representations were true, and that said garments were composed entirely of silk and to induce the purchase of said respondents' products as the result of such erroneous beliefs. The aforesaid statements and representations of respondents had the capacity and tendency to unfairly divert trade to respondents from the competitors referred to in this paragraph.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice of the public and of respondents' 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 the respondents, and a stipulation as to the facts, in which stipulation respondents waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Hart, Schaffner & Marx, and Wallach's, Inc., corporations, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of men's clothing and other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the unqualified word "Silk" or "Silkool" 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;

2. Advertising, offering for sale or selling men's clothing or any other similar products composed in whole or in part of rayon without clearly disclosing the fact that such men's clothing or similar products are composed of rayon and when such clothing or similar products are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

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

IN THE MATTER OF
SCHALL CANDY COMPANY

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

Docket 3776. Complaint, Apr. 29, 1939—Decision, July 10, 1939

Where a corporation engaged in manufacture and sale of candy including certain assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumer thereof and which included assortments composed of number of small chocolate covered egg-shaped pieces of candy, number of larger size chocolate covered candy bars, and push card, for sale under a plan and in accordance with said card's explanatory legend pursuant to which purchaser, pushing by chance certain numbers, received for his penny, in addition to one of said egg-shaped pieces, as premium one of such larger candy bars, and certain other numbers entitled persons securing same, by chance, to four of such premiums, and last number in each of three sections into which card was divided entitled persons securing same to three of such premiums—

Sold to wholesalers, jobbers, and retailers for display and resale to purchasing public by retail dealer purchasers thereof, in accordance with aforesaid or similar sales plan, such or similar assortments and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with aforesaid or similar plans, under which said larger bars were distributed to purchasing public wholly by lot or chance and involving game of chance or sale of a chance to procure additional pieces or bars of candy without additional cost, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by it in the sale and distribution of its said candy and by element of chance involved therein and were thereby induced to buy and sell its said candy in preference to that of said competitors who do not use such or equivalent methods, and with effect, because of such game of chance, of unfairly diverting trade to it from its competitors aforesaid who do not use such or equivalent methods; to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the injury and prejudice of the public and competitors and constitutes unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.
Mr. D. C. Daniel for the Commission.