

IN THE MATTER OF
PURITAN UNDERGARMENT CORPORATION

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

Docket 3810. Complaint, June 7, 1939—Decision, Aug. 23, 1939

Where a corporation engaged in manufacture, sale, and distribution of women's undergarments to and through wholesalers, retailers, and other purchasers; in furtherance of a practice of representing falsely the constituent fiber or material of which the various products sold and distributed by it were made and, in so doing, of causing false statements and representations purporting to be descriptive of its said products and their respective constituent fiber or material, as aforesaid, to be inserted in catalogs and price lists and placed on tags, labels, and markers attached to such products—

- (a) Represented, as typical of acts and practices above described, in catalogs and price lists and through tags, labels, and markers, that certain undergarments made and sold by it contained 15 percent wool and 30 percent wool, respectively, notwithstanding fact former garment was composed of 87 percent cotton, 10 percent rayon, and 3 percent wool, and other of 10.5 percent wool with remainder made up of cotton and rayon, and said undergarments did not contain percentages represented of wool, understood by purchasing and consuming public from said word, unqualified, as definitely and specifically meaning virgin or unused, as distinguished from reclaimed, wool, and decidedly preferred by prospective purchasers of such garments by reason of established reputation of fabrics made thereof for cold resistance and wearing qualities over those composed of cotton, rayon, or other fibers; and
- (b) Sold and distributed, as typical act and practice, undergarments which appeared to be partly made of silk, without disclosing that fiber or material in question was in fact rayon and not silk, long definitely and specifically understood by purchasing public as meaning product of cocoon of silkworm, and decidedly preferred by reason of reputation for superior cold resistance and other preeminent qualities, as included in fabrics made of wool and silk over those made of wool and rayon, in case of such garments over garments made of fabrics of wool and rayon, with result that purchasing public, observing and feeling its said products, in fact containing, as aforesaid, no silk, but, as aforesaid, rayon only (with appearance and feel of silk so as to be practically indistinguishable therefrom by said public), was led mistakenly to believe that garment contained in substantial quantity, silk;

With effect of misleading and deceiving substantial portion of said public into mistaken and erroneous belief that its aforesaid products contained much larger wool content than was actually the fact, and included silk content, and of causing said public to purchase said products as result of such erroneous belief thus engendered:

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

Mr. W. L. Pack 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 the Puritan Undergarment Corporation, a corporation, hereinafter referred to as respondent, 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, Puritan Undergarment Corporation, is a corporation organized under the laws of the State of New York, with its office and principal place of business at 1427 DeKalb Avenue in the city of Brooklyn, State of New York. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of women's undergarments. In the course and conduct of its business, respondent sells its said products to wholesale and retail dealers and other purchasers, and during the year last past has caused said products, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein the respondent 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. 2. In the course and conduct of its said business the respondent has engaged and is now engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by it are made. In furtherance of this practice, and for the purpose of inducing the purchase of its 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 and price lists and placed on tags, labels, and markers attached to such products.

PAR. 3. Among and typical of the acts and practices above described, the respondent, in catalogs and price lists and by means of tags, labels, and markers, represents that certain undergarments manufactured and sold by it contain 15 percent wool and 30 percent wool, respectively, when in truth and in fact said garments do not contain such percentage of wool. The garment represented and labeled as containing 15 percent wool actually contains 87 percent cotton, 10 percent rayon, and only 3 percent wool. The garment represented and labeled as containing 30 percent wool does not in

fact contain such percentage of wool but contains only 10.5 percent wool, the remaining content of such garment being cotton and rayon.

PAR. 4. The word "wool" for many years last past has had and now has in the minds of the purchasing public a definite and specific meaning, to wit, fleece or hair obtained from sheep. Fabrics made of wool have established a reputation of possessing superior cold-resistant and wearing qualities over fabrics made of cotton and other fibers. On account of such reputation, purchasers and prospective purchasers of undergarments have a decided preference for wool fabrics over fabrics composed of cotton, rayon or other fibers. The unqualified word "wool" has in the minds of the purchasing and consuming public the definite and specific meaning of virgin or unused wool as distinguished from reclaimed wool.

PAR. 5. A further typical act and practice on the part of the respondent is the sale and distribution of undergarments which appear to be made partly of silk, without disclosing that the fiber or material in question is not silk but is in fact rayon. The word "silk" has for many years had in the minds of the purchasing public a definite and specific meaning, to wit, the product of the cocoon of the silkworm. 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. Fabrics made of wool and silk have established a reputation for possessing superior cold-resistant and other preeminent qualities over fabrics made of wool and rayon, and on account of such reputation purchasers and prospective purchasers of undergarments have a decided preference for wool and silk fabrics over fabrics made of wool and rayon. The purchasing public, observing and feeling respondent's products are led to mistakenly believe that such products contain a substantial quantity of silk, whereas in truth and in fact they do not contain any silk whatever but contain only rayon, admixed with wool, a fact which is not disclosed by the respondent in the sale and distribution of such products.

PAR. 6. The use by the respondent of the false and misleading representations referred to herein has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that respondent's products contain a much larger wool content than is actually the fact, and that such products contain silk, whereas such products have no silk content. Such false and misleading representations cause and have caused the purchasing public to purchase such products as the result of such erroneous belief engendered as above set forth.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury 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 June 7, 1939, issued and served its complaint in this proceeding upon respondent, Puritan Undergarment Corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 30, 1939, the respondent filed its answer, in which answer it 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 proceedings 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, Puritan Undergarment Corporation, is a corporation organized under the laws of the State of New York, with its office and principal place of business at 950 Hart Street in the city of Brooklyn, State of New York. Respondent is now and for more than 1 year last past has been engaged in the manufacture, sale, and distribution of women's undergarments. In the course and conduct of its business respondent sells its said products to wholesale and retail dealers and other purchasers, and during the year last past has caused said products, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein respondent 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. 2. In the course and conduct of its said business, respondent has engaged and is now engaged in the practice of falsely representing the constituent fiber or material of which the various products sold and distributed by it are made. In furtherance of this practice and for the purpose of inducing the purchase of its said products, respondent

ent 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 and price lists and placed on tags, labels, and markers attached to such products.

PAR. 3. Among and typical of the acts and practices above described, respondent, in catalogs and price lists and by means of tags, labels, and markers, represents that certain undergarments manufactured and sold by it contain 15 percent wool and 30 percent wool, respectively, when in truth and in fact said garments do not contain such percentage of wool. The garment represented and labeled as containing 15 percent wool actually contains 87 percent cotton, 10 percent rayon and only 3 percent wool. The garment represented and labeled as containing 30 percent wool does not, in fact, contain such percentage of wool but contains only 10.5 percent wool, the remaining content of such garment being cotton and rayon.

PAR. 4. The word "wool" for many years last past has had and now has in the minds of the purchasing public, a definite and specific meaning, to wit, fleece or hair obtained from sheep. Fabrics made of wool have established a reputation of possessing superior cold-resistant and wearing qualities over fabrics made of cotton and other fibers. On account of such reputation purchasers and prospective purchasers of undergarments have a decided preference for wool fabrics over fabrics composed of cotton, rayon or other fibers. The unqualified word "wool" has in the minds of the purchasing and consuming public the definite and specific meaning of virgin or unused wool, as distinguished from reclaimed wool.

PAR. 5. A further typical act and practice on the part of the respondent is the sale and distribution of undergarments which appear to be made partly of silk, without disclosing that the fiber or material in question is not silk but is, in fact, rayon. The word "silk" has for many years had in the minds of the purchasing public a definite and specific meaning, to wit, the product of the cocoon of the silk-worm. 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. Fabrics made of wool and silk have established a reputation for possessing superior cold-resistant and other preeminent qualities over fabrics made of wool and rayon, and on account of such reputation purchasers, and prospective purchasers of undergarments, have a decided preference for wool and silk fabrics over fabrics made of wool and rayon. The purchasing public, observing and feeling respondent's products, are led to mistakenly believe that such products contain a substantial quantity of silk, whereas in truth and in

664

Order

fact they do not contain any silk whatever but contain only rayon admixed with wool, a fact which is not disclosed by respondent in the sale and distribution of such products.

PAR. 6. The use by respondent of the false and misleading representations referred to herein has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that respondent's products contain a much larger wool content that is actually the fact, and that such products contain silk, whereas such products have no silk content. Such false and misleading representations cause and have caused the purchasing public to purchase such products as the result of such erroneous belief engendered as above set forth.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury 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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint 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, Puritan Undergarment Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of women's wearing apparel 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. Representing that any garment or fabric has a stated percentage of wool unless, in fact, such garment or fabric does contain wool in the proportion stated.
3. Advertising, offering for sale or selling wearing apparel or fabrics composed in whole or in part of rayon without clearly dis-

Order

29 F. T. C.

closing the fact that such garments or fabrics are composed of rayon, and when such garments or fabrics 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.

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 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.

Complaint

IN THE MATTER OF
MARY ELOISE GAUSS, TRADING AS SPRAGUE-KITCHEN
& COMPANY

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

Docket 3821. Complaint, June 15, 1939—Decision, Aug. 23, 1939

Where an individual engaged in manufacture, sale, and distribution of her "Graolene" cosmetic preparation for scalp and hair; in advertisements disseminated through the mails and through circulars and other printed or written matter distributed in commerce among the various States and in the District of Columbia, and which were intended and calculated to induce, directly or indirectly, purchase of said preparation—

- (a) Represented that said "Graolene" was not a dye, but a preparation which, applied to gray hair, would cause it to change its color without dyeing it, and that use thereof restored original natural color to gray hair and supplied to the hair shaft the materials in which gray hair was deficient, facts being it was a lead sulphur dye and, applied to the hair, dyed the exterior of the hair shaft, color produced by use thereof was artificial dye, and such use did not restore original natural color to gray hair and had no effect on pigment cells of hair shaft, and did not supply to said shaft color pigments, deficiency of which is cause of gray hair;
- (b) Represented that use thereof caused the scalp, hair, and roots thereof to be normal and healthy, and that it was an effective remedy or cure for dandruff or itching scalp, and would stimulate growth of hair, facts being it would not accomplish such results and did not constitute a competent or effective cure or remedy for said ailment or condition;
- (c) Represented that it was harmless and that use thereof would produce no injurious effect, facts being salt of lead ingredient might be injurious to health of user, and particularly so where applied to skin on which there were lesions which had broken the continuity of the integument; and
- (d) Failed to reveal, in its said advertisements disseminated as aforesaid, that use thereof might produce harmful or injurious effect as above noted;

With result of misleading and deceiving members of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of her said drug-containing preparation:

Held, That such acts, representations and practices, under the circumstances set forth, were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Robert Mathis, Jr. 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 Mary Eloise Gauss,