

IN THE MATTER OF
JOHN F. JELKE 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 3347. Complaint, Mar. 3, 1938—Decision, Apr. 3, 1940

Where a corporation engaged in manufacture of a certain oleomargarine product composed of vegetable fat added to that portion of milk from which butterfat had been removed, and of added vitamin concentrates, so that emulsion in question contained vitamins A and D, and in sale and distribution of said product for use as a spread for bread, seasoning, cooking, and for same or similar purposes as those for which butter is used, through wholesalers and retailers and by sale directly to consumers, to purchasers in various other States and District of Columbia, in substantial competition with others engaged in making and selling oleomargarine and butter and sale and distribution of such products in commerce among the various States and in the District of Columbia, including those who make, distribute, and sell former without in any way misrepresenting the content thereof or method by which made; in advertising its said product in magazines and other media having general circulation among purchasers and prospective purchasers at various points throughout the United States and in the District of Columbia—

- (a) Represented and implied that its said oleomargarine product was made in or from whole milk or milk from which no part of the cream or butterfat content had been removed, and that it contained butterfat extracted from whole milk or cream taken therefrom by a process of churning as used in the making of butter, through use of such terms and words as "fresh pasteurized milk," "pastuerized milk," "churn," "churned," and "churnery," and depiction of old-fashioned dasher butter churn in connection with aforesaid words and terms, and term "milk solids" as used in such statements as "made entirely from pure vegetable oils, churned in **FRESH, PASTEURIZED MILK,**" and depiction above referred to, together with such statements as "From a sunlit churnery," etc., and "made from wholesome American vegetable oils churned in a large percentage of pasteurized milk," etc.;

Facts being product in question was not made in or from whole milk, but from skim or skimmed milk from which cream or butterfat content had been removed, and contained no butterfat extracted from whole milk or cream taken therefrom by process of churning, as used in the making of butter, and was not "churned," as used and understood by purchasing public; and

- (b) Represented, imported, and implied that its said product contained an appreciable quantity of milk solids, including butterfat extracted from whole milk, and contained more of such solids than butter, and had more food value than butter, through statement that there were "43.8% more milk solids" in its said margarine "than in expensive spreads for bread," and such statements as "Milk Solids Contain Protein—Milk Sugar—and Minerals * * *";

Facts being that said product did not contain the butterfat solid from milk, the principal, most valuable, and commonly known milk solid, less than 1½

percent of its product was milk solids which, as therein contained and contained in butter to the extent of 1 percent, were of no significance to either product, and its own preparation did not contain the milk solid butterfat which makes up about 80 percent of butter and, in short, contained no appreciable quantity of milk solids and no butterfat, principal and most valuable milk solid in butter, and did not contain more milk solids than butter and was not of more value as food than such product;

With tendency and capacity to mislead and deceive substantial portion of purchasing public, through such false, deceptive and misleading statements and representations and aforesaid depiction in connection therewith, into erroneous belief that its said product was made in or from whole milk and contained butterfat extracted therefrom or from the cream taken therefrom through churning, as used in the making of butter, and contained an appreciable quantity of milk solids, including butterfat extracted from whole milk, and more of such solids than butter, and had, therefore, more food value than said product, and to induce number of consuming public, because of such erroneous belief, to purchase its said product, and thereby unfairly to divert trade to it from competitors in commerce:

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

Before *Mr. John L. Hornor*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. Carroll J. Lord of Ashcraft & Ashcraft, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the John F. Jelke Co., Inc., hereinafter referred to as "respondent" has been, and is now, using unfair methods of competition in commerce as "commerce" is defined in 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, John F. Jelke Co., Inc., is an Illinois corporation, which has its principal office and place of business at 759 South Washtenaw Avenue in the city of Chicago, State of Illinois. Respondent is now, and has been for some time, engaged in the business of making, and selling, and distributing in commerce as herein set out, a certain product known as "Good Luck Oleo-margarine."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said product, when sold, to be transported from its office and

Complaint

30 F. T. C.

place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondent now maintains a constant current of trade in commerce in said product, distributed and sold by it, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with firms and individuals engaged in the business of making, and in selling and distributing oleomargarines and butter in commerce among and between the various States of the United States and in the District of Columbia.

In the course and operation of said business, and for the purpose of inducing the purchase of its said oleomargarine, respondent has made use of advertisements in newspapers, magazines, and periodicals having a general circulation throughout the various States of the United States and has also made use of other types of advertising generally circulated to purchasers and prospective purchasers located in all of the States, containing statements regarding the content of its said product and regarding the methods whereby it is produced or made.

Among such statements so made and used by the respondent as to its said product appear the following representations, and other representations of similar import and meaning:

Made from pure vegetable products churned in fresh, pasteurized milk.

From a sunlit churnery.

* * * made from wholesome American vegetable oils churned in a large percentage of pasteurized milk * * *

There are 43.8% more milk solids in Good Luck Margarine than in expensive spreads for bread.

PAR. 4. By the means and in the manner aforesaid the respondent represents that its said product is made in and from whole milk; that is, milk from which no part of the cream or butterfat content has been removed. Respondent's said product is not made in or from whole milk but from skim or skimmed milk, that is, milk from which the cream or butterfat content has been removed.

The term "fresh pasteurized milk" used by the respondent as aforesaid is understood and interpreted by a substantial portion of the purchasing public to mean whole milk as that term is hereinabove described.

The words "churn," "churned," and "churnery" have long been associated by the general public with the process by which butterfat is extracted from cream taken from whole milk in the process of making butter.

The use of the words "churn" and "churnery" by the respondent, as aforesaid, in connection with the words "fresh pasteurized milk" and "milk solids" imports and implies, and a substantial proportion of the purchasing public is thereby led to believe, that respondent's said product is made from whole milk, or cream taken from whole milk, and that it contains butterfat, extracted from whole milk, or the cream taken from whole milk, by "churning" as used in the process of making butter and extracting butterfat from cream.

In truth and fact respondent's said product does not contain butterfat extracted from whole milk or cream by "churning" as "churning" is done in the process of making butter, nor is said product "churned" in the sense that the term "churned" is understood by the public.

The statement to the effect that its said product contains 43.8 percent more milk solids than more expensive spreads, meaning butter, is so used by the respondent as to import and imply that there is a substantial difference in the food value of its said product and butter because of the fact that its said product contains 43.8 percent more milk solids than butter.

In truth and fact the quantity of such milk solids in each product is negligible, to wit: about 1 percent in butter and only about 1.438 percent in respondent's product, and the presence or absence of such milk solids in such quantities has no relation to the food value of either of said products.

PAR. 5. There are among respondent's competitors many who make, distribute, and sell oleomargarine, who do not in any way misrepresent the content of their product, or the methods by which it is made.

PAR. 6. Said representatives so made by the respondent, as hereinbefore set out, in its advertising, in connection with the selling and distributing of its product is false and deceptive and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representation is true. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts and practices of respondent, as hereinbefore set out, a substantial number of the consuming public purchased a substantial volume of respondent's product with the result that trade in said commerce has been unfairly diverted to the respondent from individuals, firms, and corporations engaged in the business of making, selling, and distributing similar products, including butter, who truthfully advertise their respective products. As a result thereof, substantial 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 in the District of Columbia.

PAR. 7. The above and foregoing acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition within the meaning and intent of section 5 of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 3, 1938, issued, and thereafter caused its complaint to be served in this proceeding upon respondent, John F. Jelke Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John M. Russell, attorney for the Commission, and in opposition to the allegations of the complaint by Carroll J. Lord, attorney for the respondent, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of counsel aforesaid, 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. The respondent, John F. Jelke Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois. It has its principal office and place of business at 759 South Washtenaw Avenue, Chicago, Ill. Respondent is now, and for many years last past has been, engaged in the manufacture of a certain oleomargarine product known as "Good Luck Oleomargarine" and "Good Luck Margarine" and in the sale and distribution of said product in commerce between and among the various States of the United States and in the District of Columbia. Respondent distributes its said product through wholesalers and retailers and by sale directly to consumers. This product is used as a spread for

bread, for seasoning, cooking, and for the same or similar purposes as butter is used.

PAR. 2. Respondent causes its product, when sold, to be transported from its place of business in Chicago, Ill., to the purchasers thereof located in the various States of the United States and in the District of Columbia. Sales of respondent's product are made in all of the States except Arizona, Idaho, Montana, Nebraska, Oregon, Tennessee, Utah, Washington, Wisconsin, Wyoming, and California.

PAR. 3. In the course and conduct of its said business, the respondent is and has been engaged in substantial competition with other corporations and with firms and individuals engaged in the business of making and selling oleomargarine and butter and in the sale and distribution of said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said product, respondent has made statements and representations in magazines and other advertising media having a general circulation among purchasers and prospective purchasers located at various points throughout the United States and in the District of Columbia, regarding the content of its product and regarding the methods whereby it is produced or made.

Among the statements and representations so made and used by the respondent with reference to its said product and the methods whereby it is produced or made, are the following:

Time, Jan. 25, 1937
by Ripley

Believe It or Not!

* * * * *

FORCED
BY LAW
TO USE A
MISLEADING NAME!

According to Webster's New International Dictionary "Oleo Oil" is made from *meat fats* JELKE'S GOOD LUCK contains NO oleo oil, nor any animal fat. It is made entirely from pure vegetable oils, churned in FRESH, PASTEURIZED MILK. Yet the LAW says it must be labeled "OLEOMARGARINE" which is MISLEADING.

There are 43.8% *MORE MILK SOLIDS* IN GOOD LUCK MARGARINE THAN IN EXPENSIVE SPREADS FOR BREAD!

Shown under this paragraph is a picture of an old-fashioned dasher butter churn, under which appear the following statements:

MILK SOLIDS CONTAIN
PROTEIN—MILK SUGAR—
AND MINERALS * * *
Believe It or Not! by Ripley

* * * * *

Findings

30 F. T. C.

**DEMAND THESE SAFEGUARDS IN ANY
SPREAD-FOR-BREAD!**

Dated for freshness * * * Approved by Good Housekeeping Institute * * *
Accepted by the American Medical Association * * * Made from pure vegetable products churned in fresh, pasteurized milk * * * From a sunlit churnery inspected by the U. S. Government * * * Jelke's GOOD LUCK Margarine gives you all these assurances of purity, safety.

JOHN F. JELKE COMPANY

CHICAGO

* * * *

 Woman's Home Companion

December 1936

**JELKE'S
GOOD LUCK
VEGETABLE
OLEOMARGARINE
OUR GUARANTEE**

GOOD LUCK is a pure, nutritious food made from wholesome American vegetable oils churned in a large percentage of pasteurized milk under the most modern and sanitary conditions and is rich in food energy.

PAR. 5. Through said advertisements used by the respondent in the manner aforesaid, the respondent represents and implies, and the purchasing public is led to believe, that respondent's said product is made in or from whole milk; that is, milk from which no part of the cream or butterfat content has been removed. Respondent's said product is not made in or from whole milk, but from skim or skimmed milk, which is that portion of the milk from which the cream or butterfat content has been removed. The terms "fresh pasteurized milk" and "pasteurized milk" used by the respondent in said advertisements as aforesaid are terms to designate, describe, or refer to whole milk; that is, milk from which no part of the cream or butterfat content has been removed, and they are so understood by the purchasing public. The general public has long associated the words "churn," "churned," and "churnery" with the process or the method by which butterfat is extracted from cream taken from whole milk in making butter. The use of the words "churn" and "churnery" and the picturization of an old-fashioned dasher butter churn in said advertisements by the respondent as above set out in connection with the words "fresh pasteurized milk," "pasteurized milk," and "milk solids," import and imply and a substantial portion of the purchasing public is thereby led to believe, that respondent's said product is made from whole milk or cream taken from whole milk and it contains butterfat extracted from whole milk or the cream taken from whole milk by the process of "churning," that is used in the making of butter. Respondent's said product does not contain butterfat extracted from whole milk or the cream taken from whole milk, nor is said product "churned" in the sense that the term "churned" is used and understood by the purchasing public.

PAR. 6. Respondent's statement that "there are 43.8 percent more milk solids in Good Luck Margarine than in expensive spreads for bread" imports and implies, and the purchasing public is thereby led to believe, that said product contains an appreciable quantity of solids, including butterfat, extracted from whole milk, and that it contains more of such solids than butter and has more food value than butter.

Respondent's said product does not contain the butterfat solid from milk, the principal, most valuable, and commonly known milk solid. Only about 1.438 percent of respondent's product is milk solids. About 1 percent of butter is composed of the milk solids found in respondent's said products, but butter contains approximately 80 percent of milk solid butterfat which is not found in respondent's product. The 1.438 percent of milk solids contained in respondent's product and the 1 percent of these milk solids contained in butter are of no significance in either of said products, and the presence or absence of one-half of 1 percent more or less of such milk solids would make no significant difference in the food value of either product.

Respondent's said product does not contain an appreciable quantity of milk solids and does not contain butterfat, the principal and most valuable milk solid in butter. It does not contain more milk solids than butter, nor is it of more value as a food than butter.

PAR. 7. Milk has been defined as "the whole fresh lacteal secretion obtained by the completed milking of one or more healthy cows." The public understands the word "milk" or any term in which the word "milk" is used without clear and nondeceptive qualification to mean whole milk, which is milk from which no part of the cream or butterfat content has been removed. Skim milk or skimmed milk is that portion of milk which remains after the removal of the cream in whole or in part. The solids of milk include butterfat. Butter is a food product which is made exclusively from milk or cream, or both, either with or without common salt. Butter is constituted by weight of milk solids, all tolerance having been allowed for, approximately as follows:

Butter Fat.....	80. %
Protein.....	1. %
Milk Sugar.....	0.5%
Ash.....	0.1% to 0.2%
Lactic Acid.....	0.1%

PAR. 8. Respondent's said product has been made in several ways. Prior to 1932, animal fat was used. From 1932 to 1935, both animal

Findings

30 F. T. C.

fat and cottonseed oil were used. In 1935, the animal fat was discontinued and only cottonseed oil is now used. The cottonseed oil used has been refined, deodorized, and hydrogenated, hydrogen being pushed through the cottonseed oil, changing it from a liquid into a solid. Prior to December 1933, respondent used whole milk in its product, but since December 1933 it has used only skim or skimmed milk therein, except for experimental purposes where whole milk has been used to a very limited degree. The product, since December 1933, has been composed of vegetable fat, usually neutralized as to flavor, which, with salt, is added to that portion of milk from which the butterfat has been removed. A vitamin concentrate is added so that the emulsion contains vitamins A and D. Respondent's product is presently made from the following ingredients in approximately the percentages indicated:

Cottonseed oil.....	80%
Salt.....	3%
Vitamin concentrates.....	$\frac{1}{10}$ of 1%
Milk from which butterfat has been removed.....	17%

These ingredients are placed in a machine where they are swiftly agitated by a power-operated whipper or beater until a proper emulsion has been made, when the emulsion, in a thin liquid form, is fed from the machine where agitated into a large steel drum, well below zero Fahrenheit in temperature, where the emulsion freezes thinly on the sides of the drum and is removed therefrom as it freezes by a knife which slices the mixture off the drum. This frozen mixture falls on a belt which carries it to a machine known as a worker where it is worked, from whence it is carried into the packaging machinery. Respondent's finished product contains approximately 16 percent moisture and approximately 1 percent of milk solids, both of which come from the skim or skimmed milk placed in the original mixture.

The machine into which respondent's product is placed and agitated is known among dealers in such machines and in the oleomargarine industry as an "emulsion churn" and it is referred to in the industry as a "churn." The respondent has, during all of the time it has manufactured its said product, used some type of emulsion churn to agitate its mixture and obtain a proper emulsion. This emulsion churn or agitator which is, and has been, used by respondent in the process of manufacturing its product in no way resembles a churn that is used in making butter or an old-fashioned dasher butter churn or any apparatus or device that is known to the public generally as a churn. The public generally has no knowledge of the process used in making respondent's said product or other oleomarga-

rine products and no knowledge as to the practice in the trade and on the part of the manufacturers of such machines of referring to them as "emulsion churns" or "churns." Members of the public generally who visit respondent's plant do not recognize the machine used as a churn or the process of making respondent's said product as churning, but must have these matters explained to them by the respondent before they understand that the machine is a "churn" or that the product is "churned."

The effect of respondent's so-called churning is directly the opposite to the effect of churning in the process of making butter. Respondent's "churning" blends, mixes, and produces an emulsion, while the churning process used in the making of butter removes, separates, or collects, among other things, butterfat, from an emulsion, namely, cream, in which such fat was suspended. Respondent's so-called churning produces an emulsion, while churning "breaks down" an emulsion.

The machine used by the respondent in agitating its said product in the process of manufacture is not a churn and respondent's said product is not churned, as those terms are understood by the public generally, and the use by the respondent of these words in referring to its said machine and in describing the process by which its said product is made is misleading and deceptive to many members of the purchasing public.

PAR. 9. There are among respondent's competitors who make, distribute, and sell oleomargarine those who do not in any way misrepresent the content of their product or the method by which it is made.

PAR. 10. The acts and practices of the respondent in using the false, deceptive, and misleading statements and representations and the picturization of an old-fashioned dasher butter churn in connection with the sale and distribution of its said product as hereinabove set forth, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that respondent's said product is made in or from whole milk as that term is herein defined; that it contains butterfat extracted from whole milk or the cream taken from whole milk by the process of churning as that process is used in the making of butter; that said product contains an appreciable quantity of milk solids including butterfat extracted from whole milk and that it contains more of such solids than butter and, therefore, has more food value than butter, and to induce a number of the consuming public because of said erroneous belief to purchase respondent's said product and

Order

30 F. T. C.

thereby unfairly to divert trade to the respondent from its competitors in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondent as herein found are each and all to the prejudice and injury of the public and competitors of the respondent 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 respondent, testimony, and other evidence taken before John L. Horner, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein, and oral arguments by John M. Russell, counsel for the Commission, and by Carroll J. Lord, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, John F. Jelke Co., Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its oleomargarine product, now sold and distributed under the trade name Good Luck Oleomargarine, whether sold under that trade name or any other trade name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "churn," churned," "sunlit churnery," or any derivative of the word "churn," or the picture of an old-fashioned dasher churn, or any word or words or picturization importing or implying that its product has been churned in the manner and through the process by which butter is made from milk or cream, in designating, describing, or referring to its said product or the process by which it is made.

2. Using the terms "fresh pasteurized milk" or "pasteurized milk," or any other terms or words signifying milk which do not clearly reveal that the milk referred to is not whole milk, to designate, describe, or refer to milk used by the respondent in the process of manufacturing its said product when the milk so used is other than whole milk from which no part of the cream or butter-fat content has been removed.

3. Using the word "milk" to designate, describe, or refer to that part of milk remaining after any part of the cream or butterfat has been removed, unless the word "milk" is qualified by a word or words which clearly reveal that the "milk" referred to is not whole milk but "skim" or "skimmed" milk.

4. Representing that said product contains 43.8 percent or any other percentage more "milk solids" than butter or than other spreads for bread; that said product contains any appreciable quantity of "milk solids"; that the food value of said product is attributable to the "milk solid" content thereof; or that the "milk solid" content of said product gives it more food value than butter.

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
SAKS AND COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3456. Complaint, June 16, 1938—Decision, Apr. 3, 1940

Where a corporation engaged in operating stores in New York and in the city of Chicago, from which it sold, to purchasers in States involved and to those in other States, in substantial amount, women's dresses, fur coats, and other wearing apparel, in substantial competition with others engaged in sale and distribution of similar wearing apparel and like merchandise in commerce among the various States and in the District of Columbia, and including those who do not misrepresent the kind, value, quality, composition, or conditions of the women's dresses, fur coats, or other like merchandise sold by them—

- (a) Represented, in advertisements in newspapers of general circulation in various States, in course of soliciting sale of and selling certain of its said fur coats, and representing and describing certain lots thereof at \$68.50 each, that garments were worth as much as \$200, and were all brand new and of the latest styles, and that several were genuine "Black Persian Lamb Fur Coats" and worth amount aforesaid, facts being coat last referred to was not black Persian lamb, but was made from cross-bred caracul lamb peltries of types produced in Bagdad, Syria, or Iraq, was not "brand new," latest style, but had been made over from one previously manufactured and was a definitely defective type of garment, skins of which were in very weak condition and had not been kept under proper storage conditions, and it possessed no such retail value, but, based on wholesale cost of all coats in group, had wholesale cost of about \$45 at time of sale, none of the coats advertised as aforesaid were worth \$200, but had been purchased wholesale at prices ranging from \$42.50 to \$44 each, and based on its customary mark-up over cost, possessed retail value of not to exceed \$100, and coats of similar furs and design and in good condition selling at wholesale for from \$65 to \$110 sold at average retail price of about \$165; and
- (b) Represented and described as "silk" and "ice smooth satin," certain group of dresses offered in advertisements thereof in newspapers of general circulation in various States other than the State of New York, facts being fabrics in question were composed entirely of rayon which, when so manufactured as to simulate silk, has appearance and feel thereof and is by purchasing public practically indistinguishable therefrom, and were not, as aforesaid, composed of silk, product of cocoon of the silk worm, as long definitely and specifically understood from word "silk" by purchasing and consuming public generally, and as associated in public mind with words or terms "satin," "taffeta," "crepe de chine," and "crepe" as meaning fabrics made from 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 representations were true, and to cause them to purchase said garments as result of such erroneous