

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

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beliefs, induced as above set forth, and with effect of unfairly diverting trade to it from its competitors; to the substantial injury of competition in commerce:

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

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

Mr. James L. Fort and *Mr. Robert Mathis, Jr.*, for the Commission.

Mr. Horace G. Hitchcock of Chadbourne, Wallace, Parke & White-side, 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 Saks & Co., a corporation hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Saks & Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its main office located at Fifth Avenue and Fiftieth Street, New York City, in said State, and with places of business located at Thirty-fourth and Broadway, at Fifth Avenue and Fiftieth Street, aforesaid, city and State aforesaid, and (Saks Fifth Avenue) in Chicago, State of Illinois.

Respondent is now, and for many years last past has been, engaged in the business of operating department stores from which it sells and has sold merchandise, including women's dresses, fur coats, and other wearing apparel, to its customers located in the various States of the United States, and in the District of Columbia. It causes and, during the time above mentioned, has caused its said goods, when sold, to be shipped from its places of business in New York City, aforesaid, to purchasers thereof located in the various States of the United States other than the said State of New York. There is now, and has been at all times mentioned herein, a course of trade in commerce by said respondent in said articles of wearing apparel and other like merchandise between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as aforesaid, respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of such wearing apparel and like merchandise in commerce between and

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among the various States of the United States, and in the District of Columbia. There are among the competitors of respondent in said commerce many who do not misrepresent the kind, value, quality, composition, or conditions of the dresses, fur coats, and other wearing apparel sold by them.

PAR. 3. In the course and conduct of its business as hereinabove described, respondent, in soliciting the sale of and selling certain women's dresses, and fur coats, caused, and now causes, the said dresses and fur coats to be advertised in newspapers and other publications having an interstate circulation, as follows:

(a) Special group of

WOMEN'S DRESSES

Regular and Half Sizes

16.96

The two enchanting dresses sketched are pure silk sheers. But that is not all. Vivid prints on cool white grounds. Thin dark marquisettes. Pastel crepes with their own jackets. Printed chiffon evening dresses in unforgettably beautiful cool combinations. Dark town sheets with touches of lingerie. And a special group of chic printed silk jerseys with matching silk turbans. Sizes 16½ to 24½; 34 to 44.

Fourth Floor—SAKS at 34th St;

(b)

SIDEWALK

CAFE DRESSES

12.95

of ice-smooth black satin newly important in the summer fashion scheme. Note the short puff sleeves; the hand-sculptured look; the dazzling sunburst pin. Black only. Sizes 12 to 20.

SAKS at 34th St.

(c)

368 FINE

FUR COATS

worth as much as \$200.00

69.50

Pay only 12.00 Now:

The rest over a period of five months.

Every coat is brand new—a forecast of what the smartest women will be wearing next winter. We list just a few of the coats in this record-breaking event to give you an idea of what the values are:

1 Hudson Seal (dyed Muskrat) Fur coat worth 200.00

3 Black Persian Lamb Fur Coats worth 200.00

1 Natural Grey Squirrel Fur Coat worth 200.00

2 Black Caraculs with Silver Fox collars worth 155.00

4 Squirrel Locks Fur Coats worth 155.00

2 Scotch Moleskin Fur Coats worth 155.00

4 Muskrat Fur coats worth 155.00

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10 Ponyskin Fur coats worth 145.00
 2 fine Raccoon Fur coats worth 145.00
 2 Mink-dyed Marmot Fur Coats worth 145.00
 6 Grey Krimmer Lamb Fur Coats worth 125.00
 25 Persian type Caracul Fur Coats worth 125.00
 15 Black or colored Kidskin Fur Coats worth 100.00
 20 Black Caracul Fur Coats worth 100.00 to 125.00
 10 Brown or Grey Caracul Fur Coats worth 100.00 to 125.00
 6 Panther Fur Coats worth 95.00

* * * * *

SAKS AT 34TH

The statements, and the designation and description of said dresses as, "silk jersey" and "satin" served, and now serve, as representations on the part of the respondent that said dresses were, and are, made from fabrics composed of the product of the cocoon of the silkworm, commonly known and referred to as silk. The representations that these dresses are made of silk are grossly false and misleading. In truth and in fact, said dresses, designated and described as "silk jersey" and "satin" are not made from fabrics composed of the product of the cocoon of the silkworm which is commonly known and referred to as silk.

The statements and descriptions used in connection with the offering for sale and sale of said coats by the respondent, as hereinabove set forth, served, and now serve, as representations and implications on the part of said respondent that all of the coats advertised were (1) of a retail value greatly in excess of \$69.50, the price at which they were advertised for sale; (2) that all of said coats were substantially of the retail value or worth, and customarily sold for the particular sum, indicated; and (3) that all of said coats were "brand new" and of the latest styles.

The representations and implications so made and used by the respondent in connection with the offering for sale and sale of said coats as aforesaid, were, and are, grossly false and misleading. In truth and in fact, said fur coats, so designated and described, (1) were and are not of a retail value greatly in excess of \$69.50; (2) only a few of said coats, if any, were of the retail value or worth, and customarily sold for the particular sum, indicated in said advertisement; and (3) with the possible exception of several "leaders," said coats were not, and are not, brand new and of the latest styles.

PAR. 4. The words "silk" and "satin" have had for many years past and still have, in the minds of the purchasing and consuming public, 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,

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great public esteem and confidence because of their preeminent qualities. Silk fiber has long been woven into a variety of fabrics, and a variety of distinctive terms has been applied to the fabrics resulting from different types of weaving. The designation or description of wearing apparel, or other merchandise, as "silk" or "satin" leads a substantial portion of the purchasing public to believe that such wearing apparel, or other merchandise, is made from a fabric composed of the product of the cocoon of the silkworm.

PAR. 5. The acts and practices of the respondent in using the statements, descriptions, and designations, and the representations and implications, hereinabove set out, in connection with the offering for sale and sale of said dresses and coats have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and implications were, and are, true and to cause many members of the purchasing public, because of said erroneous and mistaken belief, to purchase a substantial quantity of respondent's said products. As a consequence thereof, substantial trade in said commerce is diverted unfairly to the respondent from its competitors in said commerce, to their injury and to the injury of the public.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's 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 the 16th day of June 1938, issued and subsequently served its complaint in this proceeding upon the respondent Saks & Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 7, 1938, the respondent filed its answer to the complaint. 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 James L. Fort, attorney for the Commission, and in opposition thereto by Horace G. Hitchcock, of the firm of Chadbourne, Wallace, Park and Whiteside, before Edward E. Reardon, Esq., a trial examiner theretofore duly designated by the Commission, 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 upon the said complaint, answer,

testimony and other evidence, briefs of counsel, and upon oral arguments of Robert Mathis, Jr., of counsel for the Commission, and Horace G. Hitchcock, of counsel for the respondent; 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, Saks & Co., is a corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at No. 611 Fifth Avenue in the city and State of New York. Respondent also operates stores at Fifth Avenue and Fiftieth Street and at Thirty-fourth Street and Broadway, in the city and State of New York, and another store in the city of Chicago and State of Illinois, which is operated under the trade name of Saks Fifth Avenue..

PAR. 2. The respondent is now, and for many years last past has been, engaged in the sale of merchandise including women's dresses, fur coats, and other wearing apparel from its stores above mentioned to purchasers, some of whom are located in New York and others in States other than the State of New York. Of respondent's sales and deliveries of merchandise, a substantial amount is to residents of States other than New York, and of its sales and deliveries of fur coats and other fur articles alone about \$15,000 worth out of a total volume of fur sales of \$275,000 per annum, or about 5 percent, are made by the respondent to persons resident in States other than New York. There is now and has been at all times mentioned herein a course of trade by said respondent in said articles of wearing apparel and like merchandise in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is, and at all times herein referred to has been, in substantial competition with other corporations, firms, and partnerships engaged in the sale and distribution of similar wearing apparel and like merchandise in commerce between and among the various States of the United States and in the District of Columbia. There are among the competitors of respondent, in such commerce, various corporations, partnerships, and firms engaged in the sale of wearing apparel and other like merchandise 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.

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PAR. 4. In the course and conduct of its business, as described herein, respondent in soliciting the sale of and selling certain of its fur coats has caused advertisements to be published in newspapers of general circulation in various States of the United States. In said advertisements said respondent represented and described certain lots of fur coats for sale at \$68.50 each, said coats being represented in said advertisements as being (1) worth as much as \$200; (2) all "brand new" and of the latest styles; (3) and that several of the coats so advertised were genuine "Black Persian Lamb Fur Coats" and were worth \$200 each.

The foregoing statements and representations made by the respondent served as representations to the purchasing public that all of such coats so advertised, offered for sale, and sold (1) were of the value and worth of \$200 each; (2) were "brand new," and of the latest styles and (3) were all genuine furs of the kind and type which each was represented to be; and that the "Black Persian Lamb" coats so advertised were worth \$200 each in addition to being "brand new" and of the latest styles.

PAR. 5. In truth and in fact, the coat represented by the respondent in its advertisements as a "Black Persian Lamb" coat and which was purchased from respondent as such coat worth \$200 was not a black Persian lamb coat but was made from cross-bred caracul lamb peltries of types which are produced in Bagdad, Syria, or Iraq. The coat so sold as a black Persian lamb coat was not a "brand new" coat of the latest style at the time of the sale but was a coat that had been made over from a previously manufactured one, nor was said coat one of a retail value of \$200. It was a definitely defective type of garment, the skins of which were in very weak condition and which had not been kept under proper storage conditions for furs. Based on the wholesale cost of all the coats in this group, the wholesale cost of the fur coat so sold by respondent in its then condition was about \$45 at the time of its sale. The retail value of the coat as a new coat in good condition at the time of its sale by the respondent was not any amount near the advertised value of \$200 but was in fact considerably less than that sum.

In truth and in fact, none of the fur coats which were advertised by respondent were worth an amount near \$200 but were of a value considerably less than that amount. All of the coats so advertised, including those designated as black Persian lamb, were purchased in the same lot at a wholesale price of from \$42.50 to \$44 each. Based on respondent's customary mark-up over cost, the Commission finds that the retail value of said coat did not exceed \$100. Coats of

similar furs and design, in good condition, sell at wholesale for from \$65 to \$110 and sell at an average retail price of about \$165.

PAR. 6. Further, in the course and conduct of its said business, respondent in soliciting the sale of and selling certain women's dresses has caused advertisements to be published in newspapers of general circulation in various States of the United States other than the State of New York in which advertisements said respondent represented and described as "silk" and "ice smooth satin" a certain group of dresses offered therein.

The foregoing statements and representations made by the respondent serve as representations to the purchasing public that such fabrics so advertised, offered for sale and sold, were and are silk fabrics. The representations as hereinabove set forth are and were false and misleading in that said fabrics so represented, designated and referred to are not and were not composed of silk, the product of the cocoon of the silkworm, but are and were composed entirely of materials other than silk, to wit, acetate rayon.

PAR. 7. Over a period of many years the word "silk" has had and still has, in the minds of the purchasing and consuming public generally, a definite and specific meaning as being 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. Silk fiber has been woven for a long time into a variety of fabrics. A number of distinctive terms, such as "satin," "taffeta," "crepe de chine," and "crepe," have been applied to the fabrics resulting from the type of weaving of silk fiber. Dress goods and other items of wearing apparel designated, described and referred to as "satin," "taffeta," "crepe de chine," and "crepe" have been for a long time, and at the present time still are, associated in the public mind with fabrics made from silk, the product of the cocoon of the silkworm.

"Rayon" is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured it has an appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufacturer to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

PAR. 8. There are among the competitors of the respondent corporations, partnerships, and firms, engaged in selling and offering for sale of fabrics, women's dresses, wearing apparel, and fur coats, and other allied products, in commerce between and among the

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various States of the United States and in the District of Columbia, who do not misrepresent in any manner the kind, value, quality, material, composition or conditions of the fur coats and other wearing apparel manufactured, offered for sale and sold by them.

PAR. 9. The use by respondent of the representations set forth herein in selling and offering for sale its women's dresses and fur garments has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and to cause them to purchase said garments as a result of such erroneous beliefs induced as above set forth. The use by respondent of the representations and statements aforesaid has unfairly diverted trade to the respondent from its competitors, and thereby substantial injury is being done, and has been done, by respondent to competition in commerce among and between the various States of the United States.

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 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 Edward E. Reardon, Esq., an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Robert Mathis, Jr., Esq., counsel for the Commission and by Horace G. Hitchcock, Esq. of the firm Chadbourne, Wallace, Parks & Whiteside, 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 the respondent, Saks & Co., a 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 its furs or fur products or its textile fabrics, including women's dresses and women's wearing apparel, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any geographical or zoological terms to describe or designate furs or fur products made in whole or in part of fur other than those which truthfully express the true geographical or zoological origin of the animal from which the peltries have actually been obtained.

2. Representing as the customary or regular worth or value of any furs, or fur products made in whole or in part of fur, prices and values which are in excess of the price at which such products are regularly and customarily sold in the normal and usual course of business.

3. Representing that furs or fur products made in whole or in part of old furs which have been renovated, rebuilt, remanufactured, or restyled are new by failure to affix tags or labels on said products clearly and conspicuously indicating that said products are renovated, rebuilt, remanufactured, or restyled, as the case may be.

4. Representing in any manner that furs or fur products which are composed in whole or in part of renovated, rebuilt, remanufactured, or restyled furs are new or are composed of new material.

5. Using the unqualified descriptive terms "satin," "taffeta," "crepe de chine," or "crepe," or any other descriptive terms indicative of silk, to describe, designate or in any manner refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, provided, however, that when said words or descriptive terms are used truthfully to designate or describe the type of weave, construction or finish, such words must be qualified by using in connection and conjunction therewith in letters of at least equal size and conspicuousness a word or words clearly and accurately naming or describing the fibers or materials from which said products are made.

6. Using the term "silk" or any other term or terms of similar import or meaning indicative of silk, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, provided, that in the case of a fabric or product composed in part of silk and in part of materials other than silk, such term or similar terms may be used as descriptive of the silk content when immediately accompanied by a word or words accurately describing and designating such other materials in the order of their predominance by weight, beginning with the largest single constituent.

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
GENERAL DISTILLERIES CORPORATION

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

Docket 2445. Complaint, June 19, 1935—Decision, Apr. 10, 1940

Where a corporation engaged, under rectifier's basic permit, in purchasing, rectifying, blending, and bottling whiskies and other spirituous liquors, and in production of gin by process of redistillation of alcohol over juniper berries and other aromatics, and in sale of said various products among the various States and in the District of Columbia, and engaged, for some 2 years last past, under distiller's basic permit, in producing, bottling, and selling brandy produced in distillery leased therefor by it, and, as thus variously engaged, in substantial competition with others engaged in manufacture by distillation of whiskies, gins, and other alcoholic beverages from the raw materials and in sale thereof in trade and commerce as aforesaid, and with those engaged in rectifying, blending and bottling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages and in sale thereof in commerce as aforesaid, and including among said competitors those who, as distillers from mash, wort, or wash of the whiskies, brandies, and other alcoholic beverages sold by them, truthfully use words "distillery," "distilleries," "distilling," or "distillers" as part of their corporate or trade names, on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling whiskies, gins, and various other alcoholic beverages, do not use such words as aforesaid—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery, invoices, billheads, and order blanks, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that said whiskies and other alcoholic beverages contained in such bottles were by it made through true process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said whiskies and other alcoholic beverages, excepting brandy as above set forth, by it so bottled, labeled, sold, and transported, and did not own, operate, or control any place or places where such alcoholic beverages, with exception aforesaid noted, are made by process of distillation from mash, wort, or wash, as long definitely understood from word "distilleries" when used in connection with industry in question and products thereof by trade and ultimate purchasing public, and it was not a distiller, for the alcoholic bottled beverages of which there is a preference on the part of a substantial portion of the purchasing public; With effect of misleading and deceiving dealers and purchasing public into the belief that it was a distiller, and that the whiskies and other alcoholic beverages sold by it were by it distilled from mash, wort, or wash, and of inducing dealers and purchasing public, acting in such belief, to buy its said products made and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade name or in any other man-